No. 87-1555

In the Supreme Court of the United States

OCTOBER TERM, 1988

JAMES H. BURNLEY IV, SECRETARY, DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED MARCH 17, 1988
CERTIORARI GRANTED JUNE 6, 1988

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RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Civ. No. 7958-CAL

DATE	PROCEEDING
October 31, 1985	Complaint filed
November 1, 1985	Temporary restraining order issued
December 9, 1985	Order granting petitioners' motion for summary judgment, denying respondents' motion for summary judgment, and dissolving temporary restraining order
December 10, 1985	Notice of appeal filed

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 85-2891

DATE	PROCEEDING
July 8, 1986	Case argued and submitted
February 11, 1988	Opinion filed, reversing judgment of the district court
March 4, 1988	Order staying mandate to and including April 2, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CIVIL ACTION NO. C 85 4958 CAL

RAILWAY LABOR EXECUTIVES' ASSOCIATION
400 FIRST STREET, N.W, WASHINGTON, D.C.

AND

UNITED TRANSPORTATION UNION
GENERAL COMMITTEE OF ADJUSTMENT,
THE SOUTHERN PACIFIC TRANSPORTATION COMPANY
SUITE 201, 1860 EL CAMINO ROAD
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AND

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
GENERAL COMMITTEE OF ADJUSTMENT,
THE SOUTHERN PACIFIC TRANSPORTATION COMPANY
38750 PASEO PADRE PARKWAY
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AND

BROTHERHOOD OF RAILROAD SIGNALMEN
601 WEST GOLF ROAD
MOUNT PROSPECT, ILLINOIS 60056
PLAINTIFFS

v.

ELIZABETH DOLE, SECRETARY OF TRANSPORTATION
400 SEVENTH STREET, S.W.
WASHINGTON, D.C.

AND

JOHN R. RILEY, ADMINISTRATOR
FEDERAL RAILROAD ADMINISTRATION
400 SEVENTH STREET, S.W.
WASHINGTON, D.C.
DEFENDANTS.

FILED OCT. 31, 1985

COMPLAINT

JURISDICTION

1. This is an action for judicial review of a final rule of the Federal Railroad Administration issued August 2, 1985 in FRA Docket No. RSOR-6. Specifically, this action challenges the Constitutionality of various provisions of said regulations which cover alcohol and drug use in the railroad industry.

2. This action arises under the Constitution and laws of the United States and plaintiff seeks a preliminary and permanent injunction, and a declaratory judgment.

3. Jurisdiction of this Court is based upon 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the U.S.; 45 U.S.C. § 431 *et seq.*; 5 U.S.C. §§ 701-706; 28 U.S.C. §§ 2201-2202; and 49 U.S.C. §§ 1653(c), 1655(f)(3)(A),(C).

VENUE

Venue of this Court is based upon 28 U.S.C. § 1391(e).

PARTIES

4. The plaintiff, Railway Labor Executives' Association (hereinafter "RLEA") is an unincorporated associa-

tion whose membership comprises all of the railway labor unions in the country which represent all crafts of railroad employees.

The plaintiff, United Transportation Union, General Committee of Adjustment for the Southern Pacific Transportation Company, is an unincorporated association and is the duly and exclusively designated and authorized representative on the Southern Pacific Railroad for collective bargaining under the Railway Labor Act, on behalf of the crafts of employees known as firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees.

The plaintiff, Brotherhood of Locomotive Engineers, General Committee of Adjustment for the Southern Pacific Transportation Company, is an unincorporated association as is the duly and exclusively designated and authorized representative on the Southern Pacific Railroad for collective bargaining under the Railway Labor Act, on behalf of the crafts of employees known as locomotive engineers.

The plaintiff, Brotherhood of Railroad Signalmen, is an unincorporated association and is the duly and exclusively designated and authorized representative for collective bargaining under the Railway Labor Act, on behalf of the craft of employees known as signalmen who are engaged in the installing, repairing or maintaining of signal systems.

5. The defendant Elizabeth Dole is the Secretary of Transportation (hereinafter "Secretary"). The defendant John R. Riley, is the Administrator of the Federal Railroad Administration (hereinafter "FRA"), which is an agency of the Department of Transportation.

FACTS

6. The regulations which are at issue in this litigation, will become effective on November 1, 1985 unless otherwise ordered by the Court. This rulemaking was initiated on October 30, 1983 by the issuance of an Advance Notice of Proposed Rulemaking, 48 F.R. 30723 (July 5, 1983). A Notice of Proposed Rulemaking was issued on June 5, 1984, (49 F.R. 24252 (June 12, 1984), and the Final Rule was issued on July 31, 1985, 50 F.R. 31508 (August 2, 1985). The plaintiffs' Petition For Reconsideration was denied on October 28, 1985.

7. The regulations prohibit the use, possession, or impairment by alcohol or drugs in the railroad industry, mandate post-accident toxicological testing after certain accidents and incidents, authorizes railroads to conduct breath and urine tests based on reasonable suspicion, provides that each railroad must adopt a policy to aid the identification of employees prone to alcohol or drug usage, authorizes pre-employment drug screens and revises the reporting of alcohol and drug involvement in train accidents.

8. Plaintiffs contend that the said regulations are unlawful in that;

(a) they are arbitrary, capricious and abusive of the Administrator's discretion, and otherwise not in accordance with law;

(b) they are in excess of, and in conflict with, statutory authority of the Administrator;

(c) coverage of only employees subject to the Hours of Service Act is discriminatory and violates the Fourth Amendment of the Constitution;

(d) the post-accident toxicological testing after certain accidents/incidents and certain rule violations, violates the Fourth and Fifth Amendments of the U.S. Constitution;

(e) the provisions which authorize the railroads to conduct breath and urine tests based on reasonable suspicion violate the Fourth and Fifth Amendments of the U.S. Constitution;

(f) the pre-employment drug screens pursuant to 49 C.F.R. § 219.501 *et seq.* and the implied consent provisions pursuant to 49 C.F.R. § 219.11 are not based upon a valid consent and violate both the Fourth and Fifth Amendments of the U.S. Constitution;

(g) they violate the Railway Labor Act (45 U.S.C. § 151 *et seq.*);

(h) they violate the Federal Rehabilitation Act of 1973 (29 U.S.C. §§ 791-794);

(i) they violate the Federal Railroad Safety Act of 1970, particularly 45 U.S.C. § 437(c);

(j) they violate the Administrative Procedure Act (5 U.S.C. §§ 701-706);

WHEREFORE, plaintiffs respectfully request that this Court;

1. enter an Order temporarily restraining the rules from going into effect;

2. preliminarily enjoin the enforcement or stay the effective date of the Administrator's rules, pending a decision of this case on the merits;

3. permanently enjoin and set aside the Administrator's rules;

4. declare that the post-accident toxicological testing, the testing permitted after certain rule violations and breath and urine tests based upon reasonable suspicion without probable cause are unconstitutional;

5. grant such other and further relief as the Court may deem appropriate.

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49 C.F.R. Part 219

Subpart A – General

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part:

§ 219.3 Applications.

(a) Except as provided in paragraph (b) of this section, this part applies to –

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by Section 202(k) of the Federal Railroad Safety Act of 1970, as amended), specifically including any entity providing such service as a common carrier engaged in interstate or foreign commerce.

(b) Subparts D, E, and F do not apply to a railroad that employs not more than 15 employees covered by the Hours of Service Act (45 U.S.C. 61-64b).

§ 219.5 Definitions.

As used in this part –

(a) "Alcohol" means ethyl alcohol (ethanol). References to use or possession of alcohol include use or

possession of any beverage, mixture or preparation containing ethyl alcohol.

(b) [Reserved]

(c) "Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Parts 1301-1316).

(d) "Covered employee" means a person who has been assigned to perform service subject to the House [sic] of Service Act (45 U.S.C. 61-64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

(e) "Covered service" means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61-64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

(f) 'Co-worker" means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent or officer.

(g) "Drug" means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

(h) "EAP Counselor" means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An "EAP counselor" may be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated

by the railroad to perform functions in connection with alcohol or drug abuse evaluation or counseling. As used in these rules, an EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of the employee.

(i) "Field Manual" refers to the document described in § 219.19 of this part.

(j) "FRA" means the Federal Railroad Administration, U.S. Department of Transportation.

(k) "FRA representative" means the Associate Administrator for Safety, FRA, the Associate Administrator's delegate (including a qualified State inspector acting under Part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

(l) "Hazardous material" means a commodity designated as a hazardous material by Part 172 of this title.

(m) "Impact accident" means a train accident consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment; and

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.

(n) "Independent" means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees

does not, by itself, remove the facility from this definition.

(o) "Medical facility" means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

(p) "Medical practitioner" means a physician or dentist licensed or otherwise authorized to practice by the state.

(q) "NTSB" means the National Transportation Safety Board.

(r) "Possess" means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

(s) "Reportable injury" means an injury reportable under Part 225 of this title.

(t) "Reporting threshold" means an amount specified in § 225.19(c) of this title, as adjusted from time to time in accordance with Appendix A to Part 225 of this title.

(u) "Supervisory employee" means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

(v) "Train," except as context requires, means a locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

(w) "Train accident" means a passenger, freight, or work train accident described in § 225.19(c) of this title ("Rail equipment accident"), including an accident involving a switching movement.

(x) "Train incident" means an event involving the movement of railroad on-track equipment that results in a

casualty but in which railroad property damage does not exceed the reporting threshold.

[50 FR 31568, Aug. 2, 1985; 50 FR 38660, Sept. 24, 1985, as amended at 52 FR 10575, Apr. 2, 1987]

§ 219.7 Waivers.

(a) A person subject to a requirement of this part may petition the Federal Railroad Administration for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by Part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§ 219.9 Responsiblity for compliance.

(a) A railroad that –

(1) Having actual knowledge, requires or permits an employee to go or remain on duty in covered service while in violation of § 219.101;

(2) Fails to exercise due diligence to assure compliance with § 219.101 by a covered employee;

(3) Willfully and with actual knowledge, requires an employee to submit to testing in reliance on § 219.301 without observance of the conditions and safeguards contained in Subpart D of this part;

(4) Fails to adopt or publish, or willfully and with actual knowledge fails to implement, a policy required by Subpart E of this part; or

(5) Fails to comply with any other requirement of this part; shall be deemed to have violated this part and shall be subject to a civil penalty as provided in Appendix A.

(b) For purposes of paragraph (a)(1) of this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(c) The "knowledge" referred to in this sect' and the penalty schedule (Appendix A) is knowledge of the applicable facts. Knowledge of this part, like other provisions of Federal law, is conclusively presumed.

[50 FR 31568, Aug. 2, 1985; 50 FR 38660, Sept. 24, 1985]

§ 219.11 Consent required; implied.

(a) Any employee who performs covered service for a railroad on or after February 10, 1986, shall be deemed to have consented to testing as required in Subpart C and D of this part; and consent is implied by performance of such service.

(b) Each such employee shall participate in such testing, as required under the conditions set forth in this part by a representative of the railroad or FRA.

(c) A covered employee who is required to be tested under Subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) An employee required to participate in body fluid testing under Subpart C (post-accident toxicological testing) shall, if requested by the representative of the railroad, FRA, or the medical facility, evidence consent to taking of samples and their release for toxicological analysis under Subpart C by promptly executing a consent form, if required by the medical facility.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad on or after February 10, 1986, shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in Subpart C as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

[50 FR 31568, Aug. 2, 1985, as amended at 50 FR 45407, Oct. 31, 1985; 51 FR 3975, Jan. 31, 1986]

§ 219.13 Preemptive effect.

(a) Under Section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 219.15 Alcohol concentration in blood and breath.

(a) In this part, blood alcohol concentration (BAC) is expressed as a "percentage" weight to volume. For example, a BAC of ".04 percent" means that there is .04 gram (four hundredths of one gram) of alcohol in 100 milliliters of whole blood. This is the same quantity as "40 milligrams percent" (40 milligrams in 100 milliliters).

(b) For the purpose of determining blood alcohol concentration through an analysis of the breath, the amount of alcohol in one part of blood shall be presumed to equal the amount of alcohol in 2100 parts of an expired breath sample (by volume).

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under Section 208 of the Federal Railroad Safety Act of 1970, as amended; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

§ 219.19 Field Manual.

(a) Technical procedures for post-accident testing required by Subpart C of this part, recommended practice standards for breath and urine testing under Subpart D of this part, and related materials designed to assist the rail-

roads in establishing programs for control of alcohol and drug use are contained in the FRA Alcohol and Drug Field Manual which is revised from time to time by the Office of Safety, FRA.

(b) The Field Manual may be inspected at the Office of the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590. The Field Manual may be purchased [sic] the National Technical Information Service, Order Department, 5285 Port Royal Road, Springfield, Virginia 22161.

§ 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2130-0526.

(b) The information collection requirements are found in the following sections:

(1) Section 219.203.
(2) Section 219.205.
(3) Section 219.207.
(4) Section 219.209.
(5) Section 219.211.
(6) Section 219.213.
(7) Section 219.301.
(8) Section 219.303.
(9) Section 219.305.
(10) Section 219.307.
(11) Section 219.309.
(12) Section 219.401.
(13) Section 219.405.
(14) Section 219.407.
(15) Section 219.501.
(17) Section 219.503.

[50 FR 38660, Sept. 24, 1985]

PREVENTING ALCOHOL AND DRUG-RELATED ACCIDENTS ON RAILROADS

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JUNE 4, 1982

Prepared for
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
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PREVENTING ALCOHOL AND DRUG-RELATED ACCIDENTS ON RAILROADS

This White Paper was written pursuant to Contract No. DTFR53-82-P-00278 issued by the Federal Railroad Administration. Points of view, findings and recommendations in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Transportation.

1.0 INTRODUCTION

Three years have passed since Project REAP completed its examination of the impact that worker drinking has on railroad operations. Among its findings, the study reported that in 1978:

- Many Rule G violations occurred and were observed.
- Most observed Rule G violations went unreported.
- Many employees hid or covered for intoxicated fellow workers.
- Many employees claimed to have seen all kinds of alcohol-related accidents.

In May, 1982 the Federal Railroad Administration (FRA) sponsored an independent telephone survey to find out what railroad companies now think about the safety implications of worker drinking and drug use, what actions railroad companies are now taking to prevent alcohol and drug-related accidents and what ideas company representatives have on better ways to reduce the number of these kinds of accidents. This paper reports on the way railroads view and handle the problem today. It concludes with some recommendations on improving the effort.

2.0 1982 TELEPHONE SURVEY: THE PROBLEM AS SEEN FROM THE FIELD

In the last two weeks of May, 1982, former Project REAP staff conducted a telephone survey of twenty-one directors of employee assistance programs serving the workers on twenty-four Class I railroads.[1] These railroads employ 417,000 workers. We also spoke to eight safety directors on railroads employing 241,000 workers about safety programs specifically aimed at preventing accidents related to

substance abuse. Directors were asked for the following information about alcohol drugs and safety

- statistics on alcohol-related and drug-related accidents.
- statistics on Rule G violations.
- company handling of Rule G violations.
- statistics on the numbers of clients served by EAP's and the kinds of problems these clients have.
- ideas about FRA's future role in this area.[2]

Section 2.0 summarizes the directors' responses to questions about available company data on the problem and raises the issues concerned with improving our information about the problem in the future.

2.1 *Alcohol and Drug-Related Accidents*

All twenty-one directors said that company officials considered on-the-job drinking a serious threat to safety. All but one of the directors said that these officers also considered on-the-job drug use a serious safety concern.

We asked each railroad for statistics on alcohol and drug-related accidents for 1981. All but one of the roads said that they did not have any statistics on such accidents. The exceptional road indicated that drug use was suspected but not proven in two cases and that as far as the company could tell, alcohol was not involved in any accident that occurred in 1981.

2.1.1 *Rule G Violations in 1981*

In an attempt to get some notion of the *potential* safety threat posed by worker drinking and drug taking, Project REAP staff asked program directors about the number and disposition of Rule G violations in 1981. Only five of

the directors knew the number of Rule G violations for which formal charges were filed. None knew the final disposition of these cases. The rest of the directors said either that their offices do not compile these records or that these records were not compiled across the system. Three volunteered that Rule G cases were the exclusive domain of management and not a responsibility of the employee assistance program.

The five roads which provided statistics on Rule G violations employ 93,500 workers. Table 1 presents estimates of work-related drinking behavior on these railroads in 1981.[3]

TABLE 1
JOB-RELATED DRINKING BEHAVIOR OF WORKERS ON FIVE CLASS I RAILROADS BASED ON TELEPHONE SURVEY

Behavior	Number of Employees
Drinking on duty	11,000
Drinking subject to call	12,000
Total violations	70,000
Little drunk on-duty	14,000
Very drunk on-duty	4,700

When we project the rates for Rule G violations from Project REAP to these railroads as we do in the table above, we estimate the number of Rule G violations there to have been 34,000 on-duty violations, 36,000 violations subject to call for a total of 70,000 Rule G violations. More than 14,000 workers were on the job "a little drunk" and about 4,700 were "very drunk" on duty.

The directors from these five Class I railroads reported that there were seventy-nine Rule G investigations on their railroads in 1981. If we assume that supervisors or fellow workers observed at least the 4,700 workers who were "very drunk" at work, then at most, *less than 2 percent of observed blatant Rule G violations was reported in 1981 on these roads.*

2.1.2 *Drug-Abuse and Rail Safety Today*

Information about drug abuse on the railroads is as paltry as information was on alcohol abuse before Project REAP. There are signs that work-related drug use is a growing problem. EAP directors point to the entrance of young workers who grew up during the "drug revolution" when drugs first became widely available and used in this country. Only five EAP directors were able to provide figures on the number of their clients who had drug problems. On these roads, 15 percent of clients had problems with drugs only or with alcohol and other drugs combined.

Many directors say that they are seeing more and more people using alcohol in combination with other drugs (e.g. marijuana and valium) and other drugs alone and in combination. They also report an increasing concern about the use of drugs, especially marijuana, on the job. A few said that most EAP's on the railroads were not properly staffed to deal with workers who had problems with drugs other than alcohol.

Several mentioned special concern over a growing use of cocaine because cocaine users often have to sell part of their supply to be able to afford their own recreational use. All agreed that hard data about the nature and size of the drug problem are simply not available.

2.2 *FRA and NTSB Records*

Project REAP staff looked at FRA's accident records for 1981 and for the six preceeding [sic] years. The information in these records come from railroad companies. FRA Cost Code 510 records accidents caused by "impairment of efficiency and judgment due to drugs and alcohol." Table 2 summarizes the data on alcohol and drug-related accidents under Cost Code 510.

Table 2

TOTAL ACCIDENTS AND FATALITIES AND ALCOHOL-DRUG RELATED ACCIDENTS AND FATALITIES FROM 1975-1981

Year	Total Accidents	Alcohol-Drug Related Accidents	Total Fatalities	Alcohol-Drug Related Fatalities
1975	8,041	1	82	0
1976	10,248	2	152	0
1977	10,362	0	108	0
1978	11,277	1	139	2
1979	9,740	4	100	1
1980	8,451	2	97	0
1981	5,781	1	63	0
Total	63,900	11	741	3

According to these records, between 1975 and 1981, there were 63,900 reportable accidents involving 741 deaths. Eleven of the reported accidents and three of the reported deaths were attributable to alcohol or drugs. Only one of 5,781 accidents reported in 1981 was attributed to the use of alcohol or drugs. Both management and labor have compelling reasons for not wanting to investigate and report on accidents connected with alcohol and drugs.

Railroad companies to [sic] not want to be sued for damage of property not owned by the railroad or for injuries to members of the public at large. Unions are worried about losing worker injury claims because of the negligence of a Rule G violator.

Both management and labor fear public reactions to disclosures of alcohol and drug-related accidents.

The FRA does not get better information on alcohol related accidents because it does not receive it from company safety offices. Company safety officers say they do not receive it from operating divisions which investigate accidents. Operating officers either do not have it because they do not investigate closely or investigate closely and find nothing or find something but will not divulge it. The result is that if one were to make judgments about the connection of accidents, alcohol and safety on the basis of official documents alone, one would have to conclude the problem hardly exists.

The National Transportation Safety Board (NTSB) investigated six of the seven accidents which FRA showed as alcohol or drug-related from 1975-1981.[4] In several accident reports and before Congress, NTSB recommended that the FRA promulgate requirements that all U.S. railroads establish specific no drinking periods for train crewman on duty and before duty similar to those required by the Federal Aviation Administration for airline pilots (8 hours) and that the FRA see to it that these rules are enforced.

We asked eight safety officers for their opinion of FRA figures. They all indicated that they thought the numbers grossly underestimated the reality just as their own records did. Operating personnel, they thought, seldom reported the true cause of alcohol and drug-related accidents to

their offices. They in turn seldom have information linking accidents to alcohol and drugs to submit to FRA. One safety director, however said that he thought his railroad had five alcohol-related deaths between 1975-1981 – more than FRA records show for the entire industry for that period.

NTSB usually studies accidents only when someone is killed, tremendous damage occurs or a potential calamity is narrowly averted. By their very nature, such investigations may reveal just the tip of an iceberg. The NTSB's repeated call for additional Federal regulations indicates a belief on the part of the Board that the safety risks caused by worker drinking and drug use are serious and widespread.

2.3 *Project REAP: Alcohol Related Injuries and Accidents*

Safety officers on the seven study railroads reported 29,845 on-the-job injuries during 1978. According to the responses of workers in the general survey, an estimated 1,200 workers on all roads caused injury to themselves or to a fellow-worker because of their drinking. None of these alcohol-related injuries occurred among exempt workers. *About one out of every twenty reported injuries, then was alcohol-related.*

Although Project REAP did not produce empirical evidence on the direct connection between accidents and drinking prior to the accident, it did show that there is good reason to believe that drinking could be a serious contributing factor.

The studied railroads had a total of 4,239 reportable accidents (that is, accidents involving more than $2,300 in damage) in 1978, for a total cost for damage of about $65 million. We do not know what percentage of these accidents were alcohol-related. However, we do know that *large numbers of employees reported seeing damage of one kind or another related to drinking.* Table 3 shows the estimated number of workers on all railroads who saw various kinds of property damaged at least partly because of worker drinking.

Table 3

NUMBERS OF EMPLOYEES SEEING VARIOUS KINDS OF ALCOHOL-RELATED DAMAGE

Kind of Alcohol-Related Damage Seen	Approximate Number Seeing Damage
Trains	7,000
Tracks	5,000
Construction	4,000
Buildings	7,000
Trucks, Buses, Autos	13,000
Office or Factory Equipment	8,000

On one railroad, alcohol-related accidents were seen one time by 33 percent of employees; on another, by 25 percent; and on one the railroad with the fewest witnessed events, by 5 percent of employees. Supervisors concurred that workers who drink on the job run a higher risk of injury than others. A majority of railroad workers fear for their safety when working with co-workers who are drinking.

2.4 *Problem-Drinkers and Non-Problems Drinkers As Safety Risks*

During our telephone survey, one program director indicated that 55 percent of the Rule G violations reported on his road in 1981 were committed by non-problem

drinkers.[5] He said he believed that an even higher percentage of Rule G violations were committed by non-problem drinkers. This opinion coincides with Project REAP data on rule violations. Many other directors call a worker who violates Rule G a problem drinker *ipso facto* or simply do not believe problem drinkers as defined here violate Rule G all that much.

One out of every 5 workers or 1 out of every 4 workers who drank was a problem drinker. An estimated 44,000 workers on the seven REAP study roads were problem drinkers. Four out of every five workers or about 190,000 were non-problem drinkers. These non-problem drinkers included 1 out of every 4 workers who did not drink at all (57,000 workers) and 1 out of every four workers who drank but had no regular problems. Table 4 shows the number of rule violations accounted for by problem drinkers and non-problem drinkers in the REAP study.

Table 4

RULE G VIOLATIONS COMMITTED BY PROBLEM DRINKERS AND NON-PROBLEM DRINKERS

Type of Drinkers	Number of Workers	Number of Violations
All Drinkers	175,000	174,000
Problem Drinkers	44,000	58,000
Non-Problem Drinkers	130,000	116,000
(Abstainers)	(60,000)	–

One out of every four workers who drinks was a problem drinker, but *one out of every three rule violations was committed by a problem drinker.* Three out of every 4 workers who drink was a non-problem drinker and *two*

out of every three Rule G violations was committed by a non-problem drinker. This important observation is depicted in Figure 1.

- Reported Rule G violations continue to be a small fraction of estimated actual violations, and many railroads fail to compile records on these few Rule G investigations and their disposition across the system.
- Company representatives consider worker drug use to be a growing serious safety problem.
- Data on drug abuse and safety-related drug problems among railroad workers do not exist. There is no identifiable effort to develop credible data on drug abuse among railroad workers. Many programs do not even routinely compile statistics on the number of their clients who have different kinds of problems.
- Non-problem drinking workers as well as problem drinkers are involved in work-related drinking that threatens safety.

3.0 1982 TELEPHONE SURVEY: STRATEGIES FOR PREVENTING ALCOHOL AND DRUG-RELATED ACCIDENTS

In addition to asking program directors and safety directors about company views on alcohol, drugs and safety, we asked them what railroads are now doing about the problem. Project REAP recommended a "Help-Without Penalty" policy to reach more problem drinkers who constitute a safety risk. The study also recommended the initiation of prevention strategies aimed at non-problem drinkers who are safety risk.[5] In this section, we describe the efforts companies are now making to reduce alcohol and drug-related accidents.

3.1 *Employee Assistance Programs*

Employee assistance programs represent the rail industry's principal effort explicitly funded for and directed toward alcohol and drug abuse. Of the 21 programs serving 24 Class I railroads throughout the country, eight serve an almost exclusively problem drinking clientile. Fourteen serve employees with drug and other personal problems keeping their work below acceptable levels. All of the programs are formally aimed at identifying and helping problem drinkers.[6] Some also target problem drug users. With one possible exception, none has a component aimed at drinking rule violators who are not problem-drinkers even though non-problem drinkers may account for as much as 67 percent of Rule G violations.

As we have seen, problem drinkers made up about 20 percent of the REAP study roads. They are a serious safety risk since they accounted for 33 percent of Rule G violations. When we project the problem drinking rate of the seven REAP study roads to the Class I railroads surveyed by phone, we estimate 79,000 of the 417,000 employees on these roads are problem drinkers.

3.2 *EAP Contribution to Rail Safety*

The programs serving these Class I roads reported that they served 3,200 clients in 1981. Too few roads had statistics on the kinds of problems these clients had for us to say how many were for alcohol problems only. The definitions of rehabilitation used by programs varied among the roads.

But even if one allows that all the clients had alcohol problems and that all were permanently restored to adequate job performance, EAP's reached at the very most an average of 6 percent of problem drinkers in 1981.[7] The

penetration rate ranged from about 2 percent to about 14 percent. In general, programs with higher counselor-to-problem-drinker ratios reached higher percentages of problem drinkers. The record of railroad EAP effectiveness is probably as good as or better than programs in many other industries. In addition, the very presence and activities of EAP's may have some undefinable effect on accident prevention through consciousness raising. Still it is hard to show that EAP's alone, especially as they are now structured and funded, can make a very sizable contribution to preventing alcohol-related accidents until they begin reaching more problem-drinkers who are undoubtedly involved in them. Project REAP suggested changes in programs that would increase company success in dealing with the work-related drinking of problem drinkers. The most important suggestion was for a "Help-Without-Penalty" provision.

3.3 *Programs Not Having "Help-Without-Penalty" Provisions*

A "Help-Without-Penalty Policy" gives a troubled employee a guarantee of job security and promotion potential if he accepts the help offered by the company. Help is made available without penalty even though the individual was not performing adequately at the time of identification. This policy derives directly from definitions of problem drinking as incipient alcoholism, drug abuse as potential drug addiction and alcoholism and drug abuse as health problems. Employees whose job performance does not improve or who fail to take advantage of the help offered to them may be subject to discipline culminating in dismissal.

The telephone survey revealed that 22 of the 24 Class I railroads contacted require a formal investigation even for a first Rule G violation whether employees accept help or

not. If the charges are proved, violators are dismissed on 20 railroads. One railroad suspends violators for ninety days after a first offense. Another railroad applies a cumulative demerit system. Violators are given 30 demerits for each Rule G violation. Violators are dismissed when they accumulate 100 demerits. Participation in the program is not coerced. Three railroads virtually guarantee that alcoholics and other addicted workers may return to work on an individual basis when they are fit. Some roads continue to require minimum periods out of service ranging from 3 months to 1 year before consideration will be given to reinstatement. Two railroads will consider taking back rehabilitated addicts after six months and other employees (presumably including unrehabilitated addicts) after one year. On these twenty-one railroads, the rule violator who is a non-problem drinker can be returned to work only by winning in the investigation (a rarity) or by reconsideration after a minimum period out of service.

All these twenty-two railroads have two basic things in common. They *all require a mandatory investigation* and they all allow workers to participate in the employee assistance program on a voluntary basis if they want to be considered for reinstatement.

It is not hard to understand why supervisors hesitate to report rule violators under these conditions. They fear the ever present threat of dismissal with no guarantees of reinstatement even after what is sometimes a long fixed period out of duty. Even on the three roads where reinstatement is virtually assured to successful program participants, job restoration is not at all assured to violators who do not need the program. A reported Rule G violator who is not sick by the program's definition will be dismissed. And so, rather than put a fellow worker under

the risk of losing his job, the vast majority of supervisors usually ignore the violations and occasionally try to get the violator to go to the program on his own.

3.4 *Programs That Do Have "Help-Without-Penalty" Provisions*

Two railroads have made a significant change in this "Mandatory Investigation–Voluntary Referral" approach. Under this prevailing procedure, employees have to undergo an investigation even if they accept and cooperate with help. Railroads using this practice have a "Ship-out-*and*-shape-up policy." In contrast, two railroads practice different versions of a "Shape-up *or* ship-out policy." The approach on these two roads is "Mandatory Referral–Contingent Investigation."

3.4.1 *Optional Waiver of Rule G Investigation*

On one of these railroads, charges are immediately filed when a Rule G violation is reported. However, a worker may waive the investigation by entering and cooperating with the program. The program evaluates the worker's condition and determines whether he needs specialized assistance or not.

Troubled employees are referred to appropriate sources of help and are restored to work after the program counselor certifies their fitness.[8] Workers without problems requiring special assistance are returned to service after a first offense. During the REAP study, this railroad had the highest percentage of reported and charged drinking rule violators. The EAP on this railroad reached 14 percent of its target clientele in the study year. Finally, over the past seven years, only one worker failed to go to the program and went through the grievance procedure. He was dismissed.

3.4.2 *Rule G By-Pass*

A second railroad has an experimental program on one division of its system. This version of the "Shape-up *or* ship-out" policy is called the Rule G Bypass. A local union lodge initiated the idea in October, 1980. This new procedure requires a change in the working agreement between labor and management, which permits management to conditionally hold Rule G charges in abeyance for more than 5 days after a violation is reported. When a worker observes a fellow employee or subordinate in an "unsafe condition," he tries to summon an officer and a witness to the scene. The suspected Rule G violator is asked if he is ill or hurt. If he is not and demonstrates clear signs or drinking or intoxication, he is taken off the job and off of company property. He is paid for the rest of the day. The company does not immediately file charges. Instead, the company holds the charges in abeyance and by-passes Rule G temporarily. The rule violator then has five days to go to the program for an evaluation. If he is found to have a problem and cooperates successfully with the program, he is returned to work on the program's recommendation. If he is not a troubled employee, he is sent back to work as long as he is not considered a safety risk. On a second offense, charges are immediately filed and violators must go through an investigation.

When a Rule G violator refuses to go to the program within five days of his first infraction, he is put on administrative leave for forty-five days. During this last grace period, he may still go to the program. Peers and family members have an opportunity to try to persuade him to go. The threat of charges and an investigation remain over his head. If he fails to get to the program by the end of the forty-fifth day, charges are filed, an investigation is held and the worker is dismissed if the charges are proved.

At this writing, data are not available on the effectiveness of this by-pass arrangement. The program director on this road promises to share evaluation results at the 1981 conference on employee assistance programs in New Orleans. However, he did indicate during the telephone survey that the road had a drop in grievance procedures and in accidents on the division where the by-pass agreement is being tried. The company attributes this reduction in grievances and accidents to the by-pass policy. So far the Rule G by-pass arrangement has not been extended to other segments of the road.

3.5 Other Company Practices

Railroad EAP's promote rail safety by identifying and rehabilitating problem drinkers and problem drug users. EAP's were never formally structured to achieve other accident prevention objectives as an explicit part or their mandate (reduce use of intoxicants before and at work, keep intoxicated workers from reporting or going on to work when intoxicated, prevent Rule G recidivising among non-problem drinkers and drug users, promote responsible decisions about the use of intoxicants). However, over the past five years, railroads have pointed to EAP's to demonstrate the effectiveness of voluntary company programs in dealing with the safety problems caused by employee drinking and to ward off the imposition of Federal regulations.

In our telephone survey, we asked directors what kinds of programs or policies their railroads had in place besides EAP's to prevent alcohol and drug related accidents. We asked eight safety directors the same question about their roads. Almost all of them mentioned Rule G. Some mentioned brief presentations by directors or EAP staff at regular safety meetings. Only one director was satisfied that Rule G and safety briefings alone were enough to do

something significant about the problem. One railroad indicated that the EAP program works formally and very closely with its safety department in its efforts to educate the entire workforce about the connection of alcohol, drugs, and safety. One railroad tried to use an intoxilizer but had to discontinue its use because of litigation. Company officials think the intoxilizer still has potential as a preventive technique. At least one other railroad is examining the feasibility of using other drug detection equipment. One director argued strongly that his EAP was making a significant contribution to rail safety. Penetration rates from that road indicate that like the rest of railroad EAP's, this program cannot do enough alone to keep work-related alcohol and drug abuse under adequate control.

3.5.1 *Rule G*

Most directors thought that Rule G has some deterrent effect. Project REAP corroborates this view. From REAP, we know that 90 percent of workers say that Rule G keeps them from work-related drinking at least some of the time. We also know that the current application of Rule G does little to deter 12 percent of workers who do violate the rule from continuing to break it and that investigations touch only a small fraction of workers who are seriously intoxicated at work. They reach an even smaller percentage of other Rule G violators.

None of the program directors advocated doing away with Rule G. In fact, no one within or outside the industry has ever made a public case for removing the rule. Project REAP recommended that companies "maintain existing drinking rules and consistently apply these rules to all workers including exempt employees." In and of itself, Rule G is a sensible organizational standard.

3.5.2 *The Intoxilizer*

One railroad, convinced that the magnitude of the problem required more than just Rule G and the EAP, introduced a new preventive strategy into the workplace – the intoxilizer. The intoxilizer is the only major innovation directly aimed at preventing alcohol related accidents which the telephone survey was able to identify.

In January, 1980 the Southern Pacific Transportation Company issued a bulletin to all employees announcing a new alcohol-related, safety demonstration program under the administration of the S.P.'s Safety Department. During a trial period between June, 1980 and September 1980, employees were randomly required to undergo a breath test using an intoxilizer to detect the presence and measure the amount of alcohol in their blood. The company sent home employees with positive readings though it did not assess discipline during the demonstration period. During this same time, the company did not say what it would do to employees with alcohol in their blood after the demonstration period. Labor did not have a chance to participate in the program's design or implementation.

The International Association of Machinists and Aerospace Workers sought an injunction against the use of the intoxilizer in U.S. District Court for the Northern District of California. On July 11, 1980, District Judge Williams denied injunctive relief on the grounds that the Railway Labor Act afforded the proper remedy.

On September 16, 1980, the Vice President of Labor Relations informed the General Chairman of Operating Organizations that the demonstration period was ended and that the intoxilizer program was to immediately become an established practice. All S.P. employees were subject to intoxilizer testing while going on duty or while on duty. A person *going on duty* who refused to take the

test or who registered less than 0.10 blood alcohol concentration (less than five unoxidized drinks in one's system) was not to be allowed on the job. A worker going on duty who registered 0.10 BAC (5 or more unoxidized drinks) or more was to be taken out of service and charged with a violation of Rule G. A positive reading *on duty* at any level (e.g., 0.01 or one-half a bottle of unoxidized beer) was to result in removal from service and Rule G charges.

On September 27, the Brotherhood of Locomotive Engineers went on strike over this new policy. The strike ended September 28, 1980 in compliance with a preliminary injunction issued by the Federal Court, Northern District of California. The issue remains before the National Railroad Adjustment Board.

The unions involved have criticized the S.P.'s intoxilizer program on several counts. They contend that the SP did not involve them in conceptualizing and implementing the program. They questioned one triggering level of blood alcohol concentration (0.01 BAC) as sufficient grounds for keeping workers off the job and for filing Rule G charges against workers on-duty. They questioned the intoxilizer's sensitivity to accurately detect such low readings and the validity of interpreting them as necessarily caused by alcohol. They strongly rejected the use of the intoxilizer as a punitive rather than corrective tool. And finally, some union representatives argued that there was little point in making a high priority out of detecting more Rule G violators when little was being done about already detected violators.

Under different conditions, for different purposes, with labor cooperation, and as a corraborative [sic] instrument, the intoxilizer might have found a place as a tool to help prevent alcohol-related accidents in the railroad industry. The unfortunate experience on the S.P. makes its introduction anywhere on an experimental, controlled and therapeutic basis unlikely at least in the near future.

3.5.3 *Other Drug Detection Equipment*

One of the surveyed railroads said that the company was looking into drug testing equipment besides the intoxilizer. The intoxilizer measures only alcohol levels. Until recently, most drug detection tests were of the kind that could be done in a laboratory (e.g. blood and urine tests). New kinds of testing (especially urine tests for marijuana) are now becoming available and are being introduced in some industrial settings. There are basically three uses to which this drug detection equipment can be put: screening of applicants, testing of employees suspected of drug use and testing of employees on a random basis.

Controversial issues about these new drug tests are more numerous than those surrounding the use of the intoxilizer. Our new highly heralded urine test detects the presence of various drugs. However, it does not sufficiently pinpoint the time of consumption to be of much use to an industry like railroads. For example, it can tell whether a person has marijuana in his system but can only say that the drug entered the body from between one hour and two weeks prior to testing. The ability of the equipment to determine the time when workers took different drugs varies from drug to drug.

There are other objections being raised about the rapid introduction of drug detection equipment in the workplace. Civil libertarians argued that the use of such equipment is an intrusion into the private lives of workers. They argue that workers should be able to do as they please on their own time as long as their behavior does not affect job performance. Many workers contend that the use of the equipment especially on a random basis and without probable cause is a demeaning practice as well as an invasion of

a worker's civil rights. Some researchers claim that the use of drug detection equipment by briefly trained personnel yields questionable results. All these arguments become more vehement when the end result of a positive reading is punitive rather than therapeutic.

Whatever future utility drug detection equipment may have, this new intense interest in detection technology could divert railroads away from another critical point in employee assistance programming. Referrals to programs ought to be based on signs of unexplainable *deteriorating job performance* not on the basis of diagnostic evidence that a worker is an alcoholic or drug addict. Supervisors should be taught to define, monitor and evaluate work and to document inadequate performance as basis for referral. Doing what a supervisor is supposed to do in the first place will probably have better results than the maladroit introduction of detection equipment in the workplace at the present time.

3.6 *Issues*

The following issues emerge from an examination of on-going company efforts related to worker substance abuse and safety as they were described by EAP directors:

- With few exemptions, railroads have done little if anything new since Project REAP to successfully reduce the dangers to safety posed by the work-related drinking, intoxication and drug abuse of employees. No new effective strategies are in place to prevent the work-related substance abuse of habitual Rule G violators.
- Despite the unarguably good job EAP's do with their limited staff and resources, most programs do not make a large contribution to controlling the work-related drinking of problems drinkers who

are safety risks. At the very most, EAP's reached an average of about 6 percent of problem drinkers in 1981. Most EAP's were never structured and funded to do much more than that. Company efforts to reduce the potential for alcohol-related accidents among problem drinkers are not equal to the task.

- Although Rule G deters most workers from work-related drinking some of the time, company efforts to reduce the potential for alcohol-related accidents among rule violators who are not problem-drinkers are virtually non-existent.
- Most railroads have still not introduced a "Help-Without-Penalty" provision into their programs even though most managers and workers favor it and the policy is a key, if not defining, characteristic of programs outside the railroad industry.
- Most railroads continue to maintain a traditionally punitive rather than corrective posture toward Rule G violations. So far this punitive focus has not changed in discussions about the introduction of modern detection equipment into rail systems.
- Even though the use of drug detection equipment raises questions about privacy, civil rights, accuracy and final disposition, railroad management may introduce such equipment unilaterally before satisfactorily resolving worker concerns.
- Almost nothing is being done to reduce the potential for accidents among drug abusing employees.

4.0 RECOMMENDED STRATEGIES FOR PREVENTING ALCOHOL AND DRUG-RELATED ACCIDENTS

In order to prevent, or, at least reduce the number of alcohol and drug-related accidents, railroad companies will have to plan strategies to reach the following prevention objectives:

1. identify and rehabilitate workers who are problem drinkers *and* drug abusers.
2. keep workers from using intoxicants *before* work.
3. keep workers from using intoxicants *during* work.
4. keep intoxicated workers from coming to work.
5. keep workers who report intoxicated from going on the job.
6. keep disciplined Rule G violators who are not problem drinkers or problem drug users from breaking the rule in the future.
7. foster sensible decision-making about alcohol and drug use among employees.

FRA should make assisting railroads to achieve these accident prevention objectives a high priority item. The FRA should assign a full-time professional to plan, coordinate and advise on FRA's alcohol and drug-related safety efforts. In addition to this, there are three sets of recommendations that need to be considered. One set of recommendations is aimed at improving the information which we have on alcohol and drug-related accidents and on work-related alcohol and drug-use (Section 4.1). A second set is aimed at improving and expanding EAP efforts to prevent problem drinkers and drug abusers from causing accidents (Section 4.2). A third set suggests ways of preventing the rest of the workforce from causing such accidents (Section 4.3).

4.1 *Getting Better Data on the Problem*

As we have seen, "the information currently available to the FRA about the impact of worker drinking/drug use on rail safety is too suspect to serve as a basis for policy formulation" in this sensitive area. We recommended the implementation of the following actions to ensure the acquisition of the information the FRA needs to carry out its safety mandate.

4.1.1 *Information on Accidents Caused by Worker Use of Drugs and/or Alcohol*

- Initiate and implement an on-going policy that will overcome company and union disincentives to accurately and fully reporting the causes of alcohol and drug-related accidents. Voluntary disclosure has not worked in the past. Previous recommendations to improve investigations, documentation and reporting have not been implemented.
- Among available options, give strong consideration to an audit-penalty program. Audit a minimum percentage of company accident investigations both in suspcious curcumstances [sic] and on a random basis. Penalize railroads that do not adequately investigate and report the actual involvement of alcohol and drugs with fines severe enough to compel full disclosure in the future.

4.1.2 *Information on Rule G Violations*

Rule G investigations are one of the tools railroads use to deter undesirable work-related drinking and drug use and prevent accidents. We need more comprehensive data in this area to tell how much of the problem is being addressed through this tool.

- Develop a standard one page data collection instrument on Rule G charges and case disposition.
- Ask railroad labor relations officers to compile this data in standard formats on an on-going basis.
- As a service to the field, collect, analyze and publish these data once a year in a way that protects the anonymity of individual railroads.

4.1.3 *Information on EAP Efforts*

Railroad EAP's are a second tool companies have to reach workers whose alcohol and drug use threaten safety. Industry-wide data on EAP effectiveness is also needed.

- Develop a one page standard instrument to record how many of what kinds of clients EAP's serve with what effect.
- Ask railroad EAP directors to regularly compile this data.
- Collect, analyze and publish these data on an annual basis and share them with the field. Again protect company anonymity.

4.1.4 *Information on Work-related Drug Use*

The railroad industry has the best data of any American industry on its alcohol problems. It has virtually none on the work-related use of other drugs.

- Examine the feasibility of conducting a study of the extent, impact and handling of work-related drug use on railroads.
- Incorporate unanswered safety-related questions on alcohol in this study.
- Develop and publish a paper on the issues involved in the industrial use of drug detection equipment.

4.2 *Preventing Workers with Alcohol or Drug Problems from Causing Accidents*

In Section 3.6, we concluded that "company efforts to reduce the potential for alcohol-related accidents among problem drinkers are not equal to the task." They need to be improved and expanded. Section 4.2 offers suggestions on how these efforts might be enhanced and broadened.

4.2.1 *Demonstration "Help-Without-Penalty" Program*

- Co-design a "Help-Without-Penalty" Program with (a) participating railroad(s).
- Co-design an evaluation of the program and test it over time.
- Analyze and publish results.

4.2.2 *Model Supervisory Training Package*

- Co-develop a supervisory training package with selected EAP directors or staff.
- Test the package on at least one road.
- Share the package with all railroad EAP's.

4.2.3 *Peer Intervention Training Program*

- Up-date the existing training program together with labor representatives.
- Promote or co-sponsor delivery of the program to local chairmen together with EAP's and union representatives.

4.2.4 *Counselor Training Program, Staff Levels and Qualifications*

- Promote or co-sponsor an annual needs assessment of counselor training needs.
- Promote or co-sponsor two programs annually on selected identified in the needs assessment.

- Promote counselor staffing levels at one counselor per every 3,000 workers.
- Promote state certification for all railroad counselors.

4.2.5 *Model Program in Drug Abuse Counseling*

- Tailor existing training materials on drug abuse counseling to meet counselor needs on railroads.
- Promote or sponsor training in drug abuse counseling.

4.2.6 Dissemination of White Paper to All Railroads and REAP Results to Non-Study Railroads

- Mail this White Paper to key personnel on all railroads.
- Offer briefings to non-study railroads on the much ignored or overlooked findings and recommendations of Project REAP.

4.3 *Preventing Non-Problem Drinkers/Drug Users from Causing Accidents*

Each of the strategies described below presumes the acceptance of a broadened perspective on the part of railroads. Put simply, railroad companies need to move beyond programming that identifies and treats alcoholics to strategies that reduce alcohol *and* drug-related accidents.

Alcoholic workers are certainly a safety risk—a serious one. Rehabilitating them is a necessary part of any prevention strategy. But even if all railroad personnel who are alcoholic were rehabilitated overnight, serious safety risks related to substance abuse would remain.

4.3.1 *Model Prevention Education Packages for Entire Workforce Aimed at Reducing Alcohol and Drug Related Accidents*

- Develop a simple prevention education package for all workers.
- Test the package one road. Refine it in light of the test.
- Share the package with EAP's.

4.3.2 *Experimental changes in the workplace environment*

- Work with (a) railroad(s) to identify workable changes in work environment that might reduce the potential for alcohol and drug related accidents.
- Install the changes on participating roads.
- Evaluate, document and disseminate results.

4.3.3 *Prevention Education Workshops for Combined Safety and EAP Staff*

- Promote joint workshops on individual railroads to develop program and policy ideas for reducing the involvement of alcohol and drug in accidents.
- Collect and share prevention strategies that emerge from these workshops with other railroads.
- Encourage on-going collaboration of EAP's and safety offices and closer relations between EAP's and operational divisions.

4.3.4 *Model Education Package for Rule G Violators Who Are Not Problem Drinkers/Drug Abusers*

- Develop this education package.
- Test the package with a participating railroad EAP that has a "Help-Without-Penalty" policy.
- Share the refined package with the field.

4.4 *Prevention Staff for EAP's*

- Promote the creation of staff positions for prevention specialists within EAP's.
- Promote the coordination of EAP prevention efforts with safety offices and operational divisions.

5.0 APPENDICES

APPENDIX A

Railroads in 1982 Telephone Survey

The Atchison, Topeka and Sante Fe Railway Company
Bangor and Aroostook
Bessemer and Lake Erie Railroad
Boston and Maine
Burlington Northern
Chessie System
Chicago, Milwaukee and St. Paul & Pacific
Chicago and North Western Transportation Company
Consolidated Rail Corporation (Conrail)
Denver and Rio Grande Western Railroad
Duluth, Missabe and Iron Range Railway Company
Elgin, Joliet and Eastern Railway Company
Family Lines
Grand Trunk Western Railroad Company
Illinois Central Gulf Railroad Company
Long Island Railroad Company
Maine Central
Missouri Pacific Railroad Company
National Railroad Passenger Corporation (Amtrak)
Norfolk and Western Railway Company
The Soo Line
Southern Railway System*
South[illegible]n Pacific Transportation Company
Union Pacific
Western Pacific

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* We did not reach the appropriate representative on this railroad. None of the figures in this report represents statistics for the road.

APPENDIX B

Questionnaire Used in 1982 Telephone Survey

A. What is your company's policy with regard to work-related alcohol-drug use? As a matter of practice, what happens to a Rule G violator who is *a problem drinker or alcoholic*? To a non-problem drinker?

B.

1. How many employees were disciplined for violating Rule G in 1981? What happened?
2. How many employees were disciplined because of drug use in 1981? What happened?
3. How many employee referrals were made to the EAP because of alcohol use that resulted in the delivery of direct services to employees in 1981?
4. How many such referrals were made because of other drugs?
5. Do you and your company consider on-the-job drinking a serious threat to safety?

C. How many accidents took place on your road in 1981?

D.

1. How many of these accidents were alcohol-related?
2. How many of these accidents were drug-related?
3. Are employees required to be tested for alcohol-drug after they are involved in an accident?

E. Is there any program/policy in place that is specifically aimed at reducing alcohol and drug related accidents? What is (are) if [sic] (they)?

F. How effective do you think these approaches are in preventing alcohol and drug related accidents?

G. What are the strengths and weaknesses of these approaches?

H. Do you have an ideas about what companies can do to reduce alcohol-drug related accidents?

I. What role do you think the FRA should play in fostering the reduction of such accidents on the railroads?

APPENDIX C

Alcohol and Drug-related Accidents Investigated Between 1975-1981 By the National Transportation Safety Board*

Date	Railroad	Location
July 28, 1977	Seaboard Coastline	Oglesby, Ga.
Dec. 31, 1978	Sante Fe RR	Carnero, N.M.
July 24, 1979	Southern Pacific	Thousand Ponds, Calif.
Aug. 12, 1979	Conrail	Alliance, Ohio
Nov. 23, 1979	Union Pacific	Long Beach, Calif.
Oct. 1, 1979	Conrail	Royersford, Pa.
Nov. 11, 1980	Sante Fe RR	Pisgah, Calif.

* Data was provided by the NTSB. At the time of this writing, the NTSB did not have the following information readily available: type of train accident, type of substance abuse involved, number of fatalities involved. This information is now being searched.

APPENDIX D

Help Without Penalty Policy

Railroad companies should adopt and implement explicit policies regarding the application of drinking rules. These policies should be disciplinary (that is, educative and restorative) rather than simply punitive in practice. They should be aimed at promoting increased reporting and control of rule violations and should include the following elements:

a. Maintain existing drinking rules.
b. Explicitly and consistently apply these rules to all workers, including exempt employees.
c. Allow drinking-rule violators (first offenders) to retain an employment relationship as long as they enter and progress in treatment (problem drinkers) or enter and complete some educational regimen prescribed by the program (non-problem drinkers).
d. After a first offense, keep problem-drinking rule violators out of service only until program counselors certify their fitness to return to service.
e. Instead of dismissing non-problem-drinking rule violators on a first offense, suspend them for the average time needed by problem drinkers in treatment to return to service (use no more than three months until an average is established).
f. Abandon all minimum terms for being out of service for drinking-rule violations.
g. Dismiss all second offenders.*

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* Minimum recommended requirement. For railroads willing to go farther, we suggest progressive disciplinary procedures culminating in dismissal after a third violation.

h. Promulgate and explain this new relationship between the employee assistance program and company rules in the company policy statement and program materials.

Prevention Strategies**

Railroad companies should institute preventive practices aimed at reducing problem drinking and job-related drinking. These strategies ought to be aimed principally at changing the work-related drinking practices and environment of railroad workers.

** See pp. 172 to 173 of the final full REAP report for specific suggestions.

APPENDIX E

ESTIMATED EAP PROBLEM DRINKING PENETRATION RATES FOR 1981* ON SURVEYED RAILROADS

Railroad	Penetration Rate
A	not available
B	1.7
C	5.6
D	2.6
E	8.3
F	5.6
G	9.3
H	14.2
I	not available
J	1.5
K	2.9
L	4.7
M	5.2
N	2.0
O	2.0
P	5.0
Q	5.2
R	6.8
S	7.0
T	8.8
U	3.5

*Alphabetical designations representing individual railroads are scrambled. Designations have no relationship to REAP designations.

$$\text{Penetration Rate} = \frac{\text{total client load}}{\text{total estimated number of problem drinkers}}$$

The total client load is the number of clients personally served in 1981. Though these clients include clients with problems other than alcohol, we count them all here as problem drinkers. The effect is to raise penetration rates.

Total estimated number of problem drinkers were estimated for roads not part of the REAP study by multiplying the current number of workers employed on each road by the average prevalence rate of problem drinking in the REAP study (19 percent). The figure was estimated for REAP study roads by multiplying the current number in the workforce by the prevalence rate for problem drinking on each road in the REAP study.

FOOTNOTES:

[1] See Appendix A for a list of these railroads.

[2] See Appendix B for the Questionnaire used in the telephone survey.

[3] All the numbers in Table 1 are extrapolations. They assume that workers on these five railroads broke Rule G at about the same rate as workers on the seven REAP study roads in 1978.

[4] See Appendix C for information on the alcohol/drug-related accidents investigated by NTSB.

[5] See Appendix D for these two recommendations. See *Problem Drinking Among Railroad Workers*, pp. 37-55 for all of Project REAP's recommendations.

[6] A problem drinker is a repetitive excessive drinker whose use of alcoholic beverages if regularly and directly linked to private or public harm and is seen as the source of difficulties in one or more important aspect of his life.

[7] See Appendix E for a breakdown of these penetration rates.

[8] A troubled employee is a worker whose job performance does not meet minimal acceptable requirements because of a personal problem (e.g. alcohol, drugs or emotional difficulties).

STATEMENT FOR THE RECORD

by

Richard A. Lindblad, Dr. P.H.
Associate Director for Policy Development
and Implementation

and

J. Michael Walsh, Ph.D.
Chief, Behavioral Pharmacology Branch
Division of Clinical Research

National Institute on Drug Abuse
Alcohol, Drug Abuse, and Mental Health Administration
Rockville, Maryland 20857

before the

Federal Railroad Administration Field Hearing on
Control of Alcohol and Drug Use in Railroad Operations

September 2, 1983

Mr. Chairman, the National Institute on Drug Abuse (NIDA) is pleased to have the opportuntity to be here today to discuss with you the important issues of the effects of drugs in the workplace.

The impact of drug abuse and alcoholism on our Nation is devastating, both in terms of human suffering and in economic costs to our society. According to a recent study, the U.S. loses nearly $66 billion a year due to problems associated with alcoholism and drug abuse. Most striking, lost productivity and unemployment account for more than half of this amount, or $33 billion.

This year more than 100 million persons were employed in this country, of which between 5 and 10 percent suffer from serious drinking problems or alcoholism. Workers who have such alcohol problems are at least 25 percent less productive than their co-workers. It is somewhat more difficult to pinpoint the nature and extent of drug abuse among American workers because there is no uniform policy regarding drug detection, and studies generally have relied on self-report surveys which have definite limitations. Therefore, estimates of the impact of drug abuse in industry must be viewed with caution. Managers often are unaware of the signs and symptoms of drug abuse in people with whom they are working. Both alcohol and drug abusers can sometimes filter unidentified through the most careful and elaborate personnel procedures, and they often can be marginally productive on the job.

While we recognize the limitations of the available data, studies have conservatively estimated that 3 to 7 percent of the employed population are regular users of some form of illicit drug—ranging from marijuana to heroin. This percentage is in addition to the 5 to 10 percent of American workers who have alcohol problems, although there is some overlap in these populations.

In a NIDA-funded study of 200 companies and 5,000 workers, it was found that the prevalence of drug use averages 6 percent throughout the industrial sector. Marijuana appears to be the primary substance of use: 90 percent of the drug users indicated use of marijuana, and 37 percent of all current drug users reported use of marijuana exclusively. Use of amphetamines was cited by 34 percent and use of barbiturates was cited by 21 percent of the respondents, although nearly all respondents reporting use of these drugs also report use of marijuana.

Performance impairment resulting from alcohol and drug abuse can be wide ranging, affecting both the employee and the employer through:

- —higher accident rates
- —loss of productivity
- —decreased quality of work products
- —increased absenteeism
- —increased average level of sickness benefits
- —increased health insurance premiums
- —increased workers compensation claims
- —increased grievance submissions
- —increased thefts on the job
- —increased employee turnover
- —increased interpersonal and morale problems

Recent technical advances in diagnostic techniques developed by NIDA's researchers have made available procedures suitable for the detection of drugs in body fluids. These tests are being broadly used by the Department of Defense in an effort to detect and reduce drug use and abuse in the Armed Forces. Publicity surrounding DoD efforts has generated significant interest by private industry with regard to the use of these new techniques. As a result, increasing numbers of private corporations and Federal programs are developing drug screening programs.

How best to use drug detection tests to screen employees for drug use is a complex question. Pursuit of public safety, efficient performance, and optimal productivity can be seen as conflicting with individual rights and civil liberties. We recognize the validity of the two basic sets of conflicting principles invoked: public rights and individual rights. However, we believe that there are certain situations where use of drugs by employees have such a potential for public harm or danger (e.g., on the highways, on the railroads, in the airlines, and other transportation industries) that it is entirely appropriate and indicated to make periodic checks to determine drug-impaired performance. In such situations of public safety, managers must lean toward a strict policy with regard to employee drug use.

DRUG DETECTION TECHNIQUES

As mentioned above, the development of technology which has evolved out of NIDA's research program has made available new tools for the detection of drug use. The purpose of these assays is to detect the presence of drug or drug metabolite in body fluids (e.g., breath, urine, blood, saliva). Presently, the most commonly used body fluid is urine since it is less invasive than blood, and assays are commercially available which can provide reliable, inexpensive urine screening for a variety of abused substances. We've noted that these techniques are being used by the Department of Defense worldwide and within the last year are beginning to become commonplace in corporate America as well. Industry, public utilities, law enforcement organizations, and the transportation industries (air, highway, rail) have contacted NIDA for technical assistance to discuss the formulation of drug policies within the last year.

Although urine screening technology is extremely effective in determining drug use, the positive results of the urine screen cannot be used to infer performance impairment since drug/drug metabolites may appear in urine for several days, even weeks (depending on the drug), without related impairment. Therefore, positive urine screens can only be used as presumptive evidence of use, not impairment. If company policies are tied to performance impairment, or use on the job, then blood would be the bodyfluid to assay; since it is generally scientifically accepted that presence of drug in blood indicates very recent use. Regardless of whether blood or urine is assayed, confirmation tests, preferably using different methods, should always be carried out prior to taking adverse actions against an employee.

Drug screening techniques are being used in a variety of ways; by law enforcement organizations to determine driving under the influence of drugs, by industry for preemployment screening as well as the screening of existing employees, and in accident investigations. Results of these program efforts are just beginning to be evaluated, but it appears that drug detection techniques can be an extremely effective prevention tool. The DoD Worldwide Survey on Drug Abuse recently conducted in 1982 indicated that in the two years (1980-1982) since the implementation of drug screening techniques, the use of drugs by military personnel is down in every category. There is a continuum of options regarding how these techniques should be used and what actions should be taken once an individual has been identified as a drug abuser. Clearly company policies should be developed on a case-by-case basis and will depend to a great extent on the type of occupation and the risk involved for other employees and the public at large. Adverse actions can range from referral for treatment to

disciplinary action which may take the form of: (a) suspension, (b) loss of pay, (c) reduction in grade, (d) dismissal.

Management and unions need to work together to achieve consensus. Consultants are needed to set up and oversee laboratory procdures, for example: the type of assay to be used, quality control procedures, confirmation procedures, the sample chain of custody. Industry must set an educational process in place to inform employees of new policies. Procedures need to be explained. Contingency and adverse actions need to be set forth, both verbally and in writing.

The use of drug detection techniques is a complex area for American industry. It is not a panacea and most companies will require considerable technical assistance. Drug detection techniques can be a valuable tool in the war against drug abuse in the workplace, if properly approached and utilized.

The National Institute on Drug Abuse appreciates the opportunity to participate in these hearings on this important public health problem. We offer and pledge our technical and scientific capabilities in helping to design effective managerial procedures to reduce drug and alcohol abuse in the workplace.

EXHIBIT 7

AMERICAN TRAIN DISPATCHERS ASSOCIATION
AFL-CIO AND RLEA
8331 EAST HELEN STREET, TUCSON, AZ 85715

G. D. Bennett, Vice President
Telephone: 602/296-8676

March 1, 1985

Mr. R. E. Johnson, President
American Train Dispatchers Association
1401 South Harlem Avenue
Berwyn, Illinois 60402

Subject: Drug & Alcohol Abuse

Dear Bob:

This will refer to a recent incident on the SP at Los Angeles involving a Female Assistant Chief Dispatcher, and it's handling to date.

My knowledge of the incident, as relayed to me.

At 1:23 A.M. Sunday morning 2/24/85 a ATSF helper engine made a reverse move on double track, without direct permission of the Train Dispatcher on duty and nearly collided with an SP train.

The Train Dispatcher had *no radio communications* with the ATSF Engine. The train dispatcher attempted to relay some information (ONLY) to this engine through the operator at Kern Junction. The relay information was screwed up, etc.

The Female Assistant Chief called the Trainmaster at Bakersfield, she says, at 1:30 A.M. and asked who all she should call to notify. The Trainmaster said he would take care of it. The Superintendent was notified at 3:30 A.M.

The Chief Dispatcher, R. M. Gregory, played the tape for the Superintendent. The tape varified [sic] the fact that the dispatcher did not give the ATSF engine permission to make a reverse move.

The Superintendent ordered the trick and Assistant Chief to submit to a drug screen. Chief Dispatcher Gregory took both to a local clinic about 7:00 A.M. Sunday morning (somewhere on south main street LA slums). No problem with the trick man. The Female Assistant Chief was unable to g.ve a speciman [sic] account of the presence of a male attendant, who said the specimen had to be given in his presence. She tried drinking water and he ran water over her hands, etc. NO specimen, they finally let her go at about Noon. This incident totally upset the office for the simple reason there was NO PROBABLE CAUSE. I agree.

The Office Chairman, Forgues, called me. I informed him to contact the Superintendent, in a gentelmanly [sic] fashion and attempt to find out his reasoning. Forgues was to call me back. He talked with the Supt. who informed him he would be in Los Angeles the following morning to talk to him about it.

General Chairman, Hale, and Forgues finally discussed it with the Supt. about 1:00 P.M. Monday the 25th. Sherman, in the meantime, called General Manager Labers about the incident. The Superintendent's reasoning was that he felt someone was covering up something since he was not notified until 3:30 A.M. (still no reason to test the ACD).

After talking with you I called Sherman Hale and we talked about the incident a little more. The tape evidently reveals some of the mix up in communications with the operator at Kern Junction. I told Sherman to tell both Chief Dispatchers and both Superintendents, that NO TRAIN DISPATCHER WAS TO SUBMIT TO A DRUG

SCREEN WITHOUT FIRST CONTACTING EITHER YOU OR ME UNTIL SUCH TIME AS THIS THING IS STRAIGHTENED OUT WITH JACK SAGE.

Gregory made some remark and wanted in [sic] in writing. I told Sherman to tell him, NOTHING IN WRITING, we will let him know when we find out what is going on or what went wrong.

General Manager Bredenberg was in another Hotel in Houston at the same time I was in Houston. I contacted him and filled him in on this incident (it was not in his territory). He was upset at the incident, not us, and requested that he be called day or night if we ran into a situation that required calling either one of us.

I contacted Jack Sage, from Houston, on Thursday and gave him all the information I had on the incident. He was to check it out and get back to me on Friday.

Jack called about noon. First, he informed me that Doctor Meyer, Chief Surgeon, had handled with the head Doctor of the Clinic in LA, and that Doctor was very upset. Doctor Meyer is handling with the 187 Clinics the SP uses for test to see that this type of thing doesn't happen again. The SP has no written instructions out to it's Officers, just verbal. The reason being they didn't want to issue specific instructions until such time as the FRA rule is out. In handling this program all verbal instructions have been directed at Operating Crafts, nothing on the Non-Ops. Dave Fisher, Assistant to the General Managers, is handling the program and Jack wanted him to talk to me himself, and had him call me.

Dave called about 5:00 P.M. very apologetic about the incident, and that Dr. Meyer was handling with the Clinics, etc. Dave had listened to the tape and said there was a screw up in the information that was being relayed through the operator at Kern Junction (SP Communications). He indicated to me that the ACD had got into the

act by changing the instructions (herself), he did not indicate this was varified [sic] by the tape. There will be a joint investigation, and he said he was not sure they would even call the ACD as a witness.

My comments to him was that I felt it was poor communications and lack of training, which led to our communications complaint. General Manager Bredenberg has been assigned the task of heading up the committee involving our complaint on the communications.

As for drug screen test. The Superintendent is the only Officer on the local level that can order a test. Now, if he is in doubt he must call the General Manager. Drug screens will only be requested in case of HAZARD OF ACCIDENT-ABNORMAL BEHAVIOR or MAJOR RULES VIOLATION.

I told Dave I had no idea nor did I have control over what the Female Assistant Chief personally did with this thing. He recognized that.

Information from the other side of the coin. After the ACD had been subjected to this 5 hour ordeal, she called Forgues and filled him in what went on, she evidently contacted a lawyer later on, and on Monday, I am told, she went to a Doctor (Psychiatrist) and he admitted her to a Hospital.

At this point I am assured that this type of thing wont [sic] happen again, however, the drug screen test will continue under the categories above.

There have been four incidents since the program was initiated. One after a motor car was hit, (clean) one after some track machinery was almost hit-clock time etc. (not so clean), one when a MP train ran a red signal and derailed while the switch was in transition. (clean) and this incident.

By copy of this letter I will ask Sherman to tell the Chief's and the Superintendent's that we have assurance this type of incident won't happen again, and we are aware the test will continue but under a more supervised circumstance.

Also, Sherman, if either of these dispatchers are charged in this incident let me know.

Fraternally,

G. D. BENNETT
Vice President

cc: A. S. Hale
R. M. Forgues
Executive Board

PLAINTIFF'S EXHIBIT 6

AMA NEWS RELEASE

RECEIVED MAY 2, 1985
Cam. St. Leg. Dir.

EMBARGOED FOR RELEASE:
4:30 p.m. (CST), THURSDAY, APRIL 25, 1985

For further information, contact:
Martha Boyce
312/645-4843

FALSE LAB RESULTS COMPOUND DRUG ABUSE DILEMMA

CHICAGO – Laboratories using urine screening tests to detect the presence of methadone, barbiturates, amphetamines, cocaine and other drugs are yielding unreliable results, according to a report in Friday's *Journal of the American Medical Association.*

Hugh J. Hansen, PhD, and colleagues of the Centers for Disease Control (CDC), Atlanta, describe the results of a blind study and four previous studies conducted by the CDC in conjunction with the National Institute on Drug Abuse to monitor laboratory error rates in routine patient urine samples. In the latest study (conducted in 1981), 100 urine samples containing small amounts of various drugs were sent to 13 laboratories that served a total of 262 methadone treatment centers. The researchers report that 91 percent of the labs had unacceptable false-negative rates for barbiturates, 100 percent for amphetamines, 50 percent for methadone, 91 percent for cocaine, 15 percent for codeine and 92 percent for morphine.

"Error rates for the 13 laboratories on samples containing barbiturates, amphetaines, methadone, cocaine, co-

deine, and morphine ranged from 11 to 94 percent, 19 to 100 percent, 0 to 33 percent, 0 to 100 percent, 0 to 100 percent and 5 to 100 percent, respectively," the researchers say. "Similarly, error rates on samples not containing these drugs (false-positives) ranged from 0 to 6 percent, 0 to 37 percent, 0 to 66 percent, 0 to 6 percent, 0 to 7 percent and 0 to 10 percent, respectively."

The researchers conclude from these blind tests that laboratories take greater care with known evaluation samples and achieve more accurate results than with routine samples. In two earlier tests, samples were mailed directly to the labs, and the percentage of drugs detected ranged from 76 to 100 percent. When test samples were introduced into the lab without notification, however, the percentage at the same labs ranged from 11 to 100 percent.

Laboratories are often unable to detect drugs at concentrations called for by their contracts, and the observed underreporting of drugs may threaten the treatment process, the researchers say. "While the results reflect serious shortcomings in the laboratories, the laboratories are only a part of a complex picture involving also the treatment centers, the clients, and the local, state, and federal governments." They recommend that blind testing be conducted routinely by those responsible for drug treatment to assess the quality of service provided by laboratories, noting that such testing could be greatly enhanced by automation and computer use.

Crisis in Drug Testing

Results of CDC Blind Study

Hugh J. Hansen, PhD; Samuel P. Caudill, PhD; D. Joe Boone, PhD

From the Clinical Chemistry and Toxicology Section, Performance Evaluation Branch, Division of Technology Evaluation and Assistance (Drs Hansen and Boone), and Management Development and Consultation Division (Dr. Caudill), Laboratory Program Office, Centers for Disease Control, Atlanta. Dr. Hansen is now with the National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta.

Reprint requests to Centers for Disease Control, Bldg. 6, Room 316, 1600 Clifton Rd NE, Atlanta, GA 30333 (Dr. Boone).

• In response to questions about the reliability of the results of screening urine for drugs, we evaluated the performance of 13 laboratories, which serve a total of 262 methadone treatment facilities, by submitting preferenced samples through the treatment facilities as patient samples (blind testing). Error rates for the 13 laboratories on samples containing barbiturates, amphetamines, methadone, cocaine, codeine, and morphine ranged from 11% to 94%, 19% to 100%, 0% to 33%, 0% to 100%, 0% to 100%, and 5% to 100%, respectively. Similarly, error rates on samples not containing these drugs (false-positives) ranged from 0% to 6%, 0% to 37%, 0% to 66%, 0% to 6%, 0% to 7%, and 0% to 10%, respectively. These blind tests indicate that (1) greater care is taken with known evaluation samples than with routine samples, (2) laboratories are often unable to detect drugs at concentrations called for by their contracts, and (3) the observed underreporting of drugs may threaten the treatment process. Drug treatment facilities should monitor the performance of their contract laboratories with quality-control samples, preferably through blind testing.

(JAMA 1985; 253:2382-2387)

FROM 1972 through 1981, the Centers for Disease Control (CDC), in conjunction with the National Institute on Drug Abuse, conducted a proficiency testing (PT) program for drugs-of-abuse screening laboratories.[1] In this program, ten drug-spiked urine samples were mailed quarterly to each participating laboratory (each laboratory received 40 "mailed PT" samples per year). The participants in the program tested the samples for the requested drugs and submitted a report for grading on each quarterly survey by the cutoff date. If at least 80% of the responses were correct, the laboratory was classified as "satisfactory"; otherwise, the laboratory was classified as "unsatisfactory."

Early in the program, allegations were made that some laboratories were not subjecting mailed PT samples to the same testing procedures as their routine patient samples. These claims prompted two CDC studies in which data were collected through an alternative mode of PT—the blind test. This mode of testing requires the use of a dedicated surrogate office to introduce the test samples into the laboratory without the laboratory's knowledge (for example, a physician's office or a drug treatment facility). In these studies (one in 1973, with 24 laboratories, and another in 1975, with nine laboratories), results of mailed PT were compared with blind PT laboratory perfor-

mance.[2] Although the percentage of drugs detected by laboratories in the two studies ranged from 76% to 100% (average, 98%) on mailed PT samples, the percentage on blind PT samples for the same laboratories testing identical samples ranged from 11% to 100% (average, 69%). Additional CDC blind studies (an initial study in 1978 conducted with the assistance of the Federal Bureau of Prisons and another in 1980 with the assistance of two treatment centers) provided results similar to those from the earlier CDC blind studies.[3] The percentage of drugs detected by the six laboratories ranged from 37% to 74% (average, 61%).

Supportive of the CDC blind studies, other investigators have reported on blind studies that showed error rates of a magnitude comparable with those found by the CDC. In one such study, in 1976, Gottheil et al[4] reported blind testing results for a drug-screening laboratory that detected only 65% of the drugs in the samples. The laboratory also reported 152 false-positive results occurring in 106 (66.5%) of the 160 samples.

With the background of previous studies that suggested a number of laboratories may have high error rates on routine patient samples, a blind study was undertaken with two primary objectives in mind: (1) to determine error rates that would reflect the laboratory error rates on routine patient samples and (2) to classify the laboratory's performance as acceptable or unacceptable on the basis of predefined drug-screening error rates.

Table 1.—Summary of Data on Drug or Drug Class Included in the 1981 Blind Study*

Drug or Drug Class	Centers for Disease Control's (CDC) MRLs, μg/mL	Concentration† Range, μg/mL	No. of Challenges: Drug	No. of Challenges: Total
Barbiturates				
Phenobarbital	1.0	1.0-2.0	26	
Pentobarbital	1.0	1.2-3.0	5	38
Secobarbital	1.0	1.0-2.0	7	
Amphetamines				
b-amphetamine	1.0	1.0-2.0	32	56
Methamphetamine	1.0	1.0-3.0	24	
Methadone				
Methadone (percent)	1.0	1.0-2.0	44	88
Methadone (metabolite)‡	1.0	1.0-2.0	44	
Cocaine				
Cocaine (parent)	2.0	2.0-4.0	23	57
Cocaine (metabolite)§	4.0	4.0-5.0	34	
Opiates				
Codeine	0.5	0.6-2.0	40	
Morphine (parent)"		0.1-0.8	39	118
Morphine (metabolite)¶		0.9-1.8	39	
Others#				
Phencyclidine hydrochloride (PCP)	1.0	0.3-4.3	24	
Methaqualone (Quaalude)		1.0-2.0	27	
Pentazocine (Talwin)		1.0-2.0	11	67
Propoxyphene hydrochloride (Darvon)		3.0	3	
Cannabinoid (Δ^9-metabolite)		0.2	2	

*The minimum reporting levels (MRLs), concentration range, and the number of samples containing a particular drug.

†Concentrations below the CDC's MRLs were not used in the evaluation.

‡2-Ethyl-1.5-dimethyl-3.3-diphenylpyrrolium perchloate.

§Benzoylecgonine.

"The MRL for total morphine was 0.5 μg/mL. No sample had less than 1.0 μg/mL.

¶Morphine glucuronide.

#No: considered in evaluation.

Table 2.—Sampling Plans and Associated Probabilities for the Centers for Disease Control Blind Study (Positive Challenges Only)

Drug or Drug Class	Sampling Plan* n	r	*P* of Acceptable Classification† FNR = 0.05	FNR = 0.10	FNR = 0.20	FNR = 0.25
Barbiturates	38	4	.96	.67	.10	.02
Amphetamines	48	4	.91	.47	.02	.003
Methadone	45	4	.93	.53	.04	.01
Cocaine	34	3	.91	.55	.07	.02
Codeine	42	4	.94	.59	.06	.01
Morphine	40	4	.95	.63	.08	.02

*n indicates the intended number of positive challenges; r, the maximum number of false-negatives allowable for acceptable classification.

† FNR indicates false-negative rate (i.e., the relative frequency in routine testing with which a laboratory concludes that a positive [drug present] sample is negative [drug absent]).

METHODS

Selection of Laboratories

The primary factor in selecting the laboratories included in this study was the number of methadone centers they served and not their previous performance on mailed PT or reports of poor performance from treatment programs. The number of methadone centers served by the selected laboratories ranged from four to 83 and spanned 26 states. The 13 laboratories selected served a total of 262 methadone centers. Although all laboratories in the mailed PT program were informed that selected laboratories would be surveyed in blind studies, the specific laboratories selected were not notified of their selection.

Sample Preparation

Each laboratory in the study received 100 urine samples. Each sample was selected from stock samples previously analyzed in the CDC's mailed PT program by 450 toxicology laboratories, including 40 reference laboratories. Each sample was prepared from human urine that had been screened by thin-layer chromatography and found to be free of the drugs being tested for in this study. The urine pool was prefiltered through a 0.22-μm membrane. Drugs or their metabolites in their salt form were added quantitatively to provide the concentrations shown in Table 1. Each pool was sterilized by filtration and dispensed aseptically into 60-mL vials. The samples were then stored at 44° C until they were shipped to the treatment facilities. The samples were reanalyzed at the end of the study, and the initial concentrations were confirmed.

Minimum Reporting Levels

The CDC Mailed Proficiency Testing Program provides minimum reporting levels with each PT survey. All drug concentrations above the minimum reporting levels are to be reported positive: those below, negative. The CDC's minimum reporting levels (Table 1) were decided on by a peer review committee established by the National Institute on Drug Abuse, which consisted of consultants selected from the ranks of nationally known toxicologists. All laboratories included in this survey were able to detect drugs at the minimum reporting levels listed in the quarterly mailed surveys, as evidenced by satisfactory performance in the mailed surveys.

Study Design and Analysis

The CDC blind study was designed to classify (with $P \geq 90$) laboratories with a false-negative rate (FNR) and a

false-positive rate (FPR) of 0.05 or less as acceptable and to classify (with $P \leq .05$) laboratories with FNR or FPR of 0.25 or greater as unacceptable. This objective was accomplished using "attribute acceptance sampling plans" to specify the number of positive (drug present) and negative (drug absent) samples to be tested by each laboratory for each drug and a rule for deciding whether a given laboratory has an acceptable FNR and FPR. For the purposes of this report, the acceptance sampling plans used were designed to classify laboratories as acceptable or unacceptable based only on their FNRs. This decision was made because false-negatives tended to occur much more frequently than false-positives and because the results when presented in this form are more amenable to comparison with results in previous studies.

The acceptance sampling plans for each drug or drug class are presented in Table 2, where n represents the number of positive challenges and r represents the maximum number of false-negatives a laboratory could have and still be classified as acceptable. Also presented in Table 2 are the probabilities with which laboratories with the associated FNR would be expected to be classified as acceptable based on the corresponding sampling plan. These probabilities give an indication of how well the various sampling plans should perform in discriminating between laboratories with various FNRs. Inspection of Table 2 will show that these plans can be expected to classify (with $P > .90$) laboratories with an FNR of 0.05 or less as acceptable and to classify (with $P \leq 0.10$) laboratories with an FNR of 0.20 or greater as acceptable. For example, a laboratory with an FNR of 0.05 for barbiturates would have a probability of about .96 of receiving an acceptable classification (ie, four or fewer false-negatives in a set of 38 samples containing barbiturates),

whereas a laboratory with an FNR of 0.20 for barbiturates would have a probability of only .10 of receiving an acceptable classification.

In the evaluation process, barbiturates and amphetamines were each treated as a class. The metabolites of methadone and cocaine were added to mimic a patient sample and were not treated separately. Morphine and codeine were treated separately. At the treatment facilities, the blind samples were intermixed among patient samples and thereafter treated exactly as patient samples. The number of blind samples entering the laboratory from any given treatment facility was not greater than 10% of the total number of samples submitted.

Table 3.—Laboratories With Acceptable Performance*

Drug or Drug Class	Total No. of Laboratories†	No. (%) of Laboratories With Acceptable Performance
Barbiturates	11	1 (9)
Amphetamines	12	0 (0)
Methadone	12	6 (50)
Cocaine	11	1 (9)
Codeine	13	2 (15)
Morphine	13	1 (8)

* Laboratories were considered acceptable for a particular drug based on the statistical design of the 1981 blind study.

† To ensure (with $P \geq .95$) that laboratories with a false-negative rate of 0.25 or more would be classified as unacceptable and to ensure (with $P \geq .90$) that laboratories with a false-negative rate of 0.05 or less would be classified as acceptable, only laboratories subjected to at least 29 positive challenges for a given drug or drug class were included.

Comparison of blind studies, 1973 through 1981, shown as the percentage of correct responses on positive challenges by drug. 1973, Centers for Disease Control (CDC), 24 laboratories; 1975, CDC, nine laboratories; 1976, Jefferson Medical College, one laboratory (see reference 4); 1978, CDC, four laboratories; 1980, CDC, two laboratories; 1981, CDC, 13 laboratories. (Supporting data for this figure contained in Table 4.)

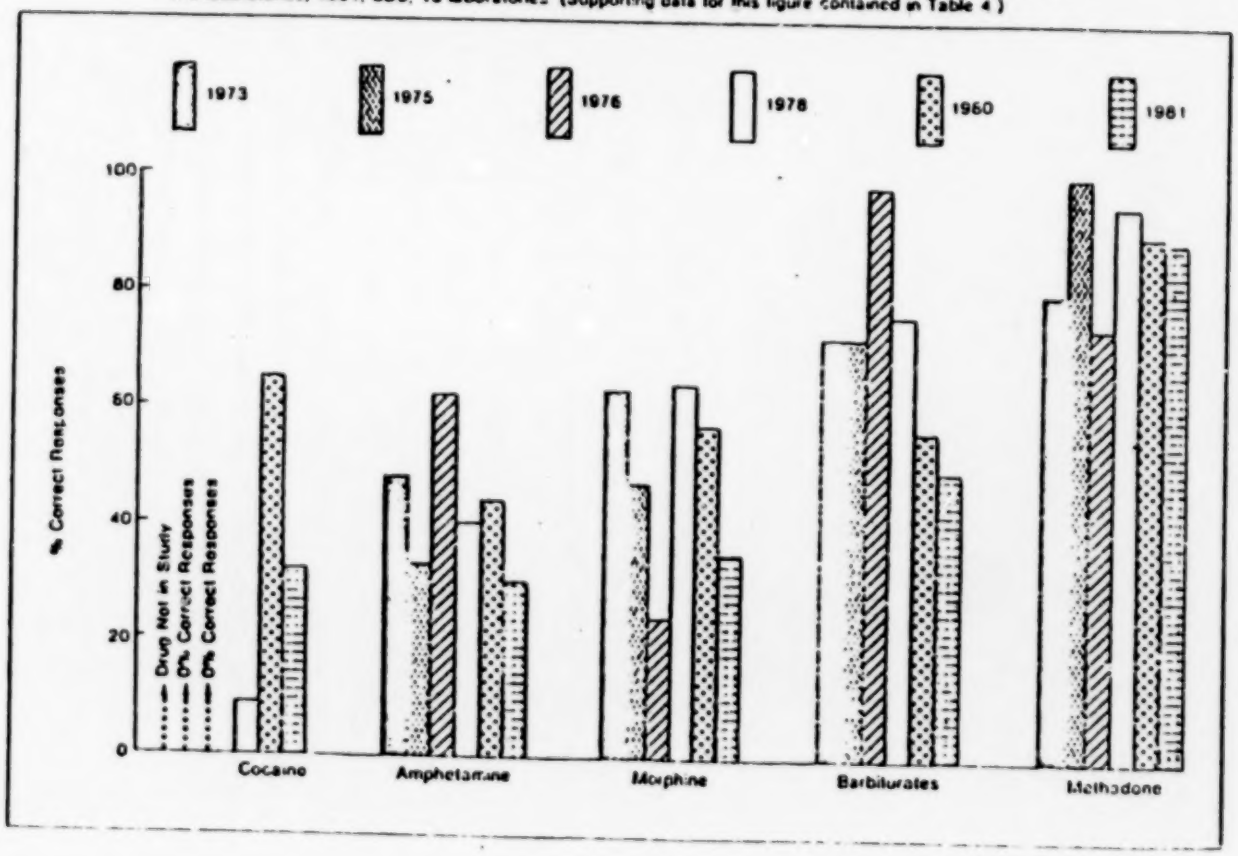

Table 4.—Supporting Data for the Figure: Number of Positive Drug Challenges and Percentage of Correct Responses by Drug by Year*

Drug or Drug Class	1973, 24 Laboratories; No. (%)	1975, 9 Laboratories; No. (%)	1976, 1 Laboratory; No. (%)	1978, 4 Laboratories; No. (%)	1980, 2 Laboratories; No. (%)	1981, 13 Laboratories; No. (%)
Cocaine	Not included	7† (0)	66 (0)	90 (9)	85‡ (65)	412 (32)
Amphetamines	82 (48)	9 (33)	66 (62)	105 (40)	169 (44)	566 (30)
Morphine	111 (63)	45 (47)	66 (24)	120 (64)	164 (57)	470 (35)
Barbiturates	110 (72)	36 (72)	66 (98)	165 (76)	160 (56)	456 (49)
Methadone	100 (80)	54 (100)	66 (74)	105 (95)	134 (90)	538 (89)

* Percentages were obtained by dividing the total number of correct responses by the total number of positive drug challenges.

† Only seven of the nine laboratories in the study offered a service for testing for cocaine.

‡ Data were available from only one laboratory for cocaine testing.

Table 5. – Summary of Results on Positive Samples by Drug or Drug Class From Blind Study*

Laboratory	Drug or Drug Class																	
	Barbiturates			Amphetamines			Methadone			Cocaine			Codeine			Morphine		
	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %
A	38	16	6-31	47	0	0-8	44	73	57-85	34	0	0-10	40	8	2-20	39	44	28-60
B	38	50	33-67	47	74	60-86	44	89	75-96	34	76	59-89	40	33	19-49	39	49	32-65
C	38	89	75-97	47	81	67-91	44	100	92-100	34	0	0-10	40	100	91-100	39	95	83-99
D	38	26	13-43	47	43	28-58	44	91	78-97	34	9	2-24	40	53	36-68	39	3	0-11
E	18	6	0-24	20	20	6-44	28	86	67-96	20	90	68-99	16	19	4-46	18	17	4-41
F	38	16	6-31	47	0	0-8	44	98	90-100	34	0	0-10	40	0	0-9	39	0	0-9
G	19	16	3-40	31	65	45-81	24	67	45-84	18	0	0-19	19	0	0-18	19	53	29-76
H	37	46	29-63	44	11	4-25	45	78	63-89	32	19	7-36	44	59	43-74	42	40	26-57
I	38	21	10-37	47	0	0-8	44	100	92-100	34	0	0-10	40	25	13-41	39	5	1-17
J	40	43	29-59	48	13	5-25	45	93	82-99	36	61	43-77	42	38	24-54	40	13	4-27
K	38	63	46-78	47	40	26-56	44	100	92-100	34	100	90-100	40	93	80-98	39	31	17-48
L	38	61	43-76	47	6	1-18	44	89	75-96	34	32	17-51	40	33	19-49	39	23	11-39
M	38	84	69-94	47	47	32-62	44	86	73-95	34	38	22-56	40	53	36-68	39	85	69-94

* The number of samples, the correct response rate (CRR), and the 95% confidence interval (CI), on the CRR for the 13 laboratories in the Centers for Disease Control blind study. Confidence intervals were computed based on the binomial probability distribution.

Table 6. – Summary of Results on Positive Samples by Drug or Drug Class From Mailed Proficiency Testing Surveys 1979 II through 1981 I*

Laboratory	Drug or Drug Class																	
	Barbiturates			Amphetamines			Methadone			Cocaine			Codeine			Morphine		
	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %
A	35	100	98-100	32	97	86-100	30	100	88-100	29	100	88-100	28	68	48-84	29	100	88-100
B	19	100	82-100	19	95	77-100	19	100	82-100	17	100	81-100	19	74	49-91	18	100	82-100
C	39	100	91-100	36	97	88-100	34	100	90-100	31	100	89-100	32	100	89-100	32	100	89-100
D	39	100	91-100	36	100	90-100	34	100	90-100	32	84	89-100	32	84	67-95	32	88	71-96
E	39	95	83-99	36	100	90-100	34	97	87-100	32	97	86-100	32	97	86-100	32	100	89-100
F	39	97	89-100	36	92	78-98	34	100	90-100	31	97	86-100	...†			...†		
G	34	100	90-100	32	100	89-100	29	100	88-100	25	100	86-100	27	100	87-100	27	100	87-100
H	39	95	83-99	36	83	67-94	34	100	90-100	31	100	89-100	32	100	89-100	32	97	86-100
I	39	97	89-100	36	100	90-100	31	100	89-100	31	100	89-100	32	100	89-100	32	100	89-100
J	34	97	87-100	31	94	79-99	29	100	88-100	25	96	82-100	26	92	82-100	26	69	48-86
K	39	92	79-98	36	97	88-100	34	100	90-100	31	97	86-100	32	97	86-100	32	97	86-100
L	39	100	91-100	36	94	81-99	34	100	90-100	31	100	89-100	32	84	67-95	32	100	89-100
M	39	97	89-100	36	94	81-99	34	100	90-100	31	87	70-96	32	100	89-100	32	100	89-100

* The number of samples, the correct response rate (CRR%), and 95% confidence interval (CI), on the CRR for each of the 13 laboratories in the Centers for Disease Control 1981 blind study. Confidence intervals were computed based on the binomial probability distribution. Quarterly surveys are designated by the numbers I through IV.

† Service not offered for these drugs.

RESULTS

The number and percentage of laboratories whose performance was found acceptable on a particular drug according to the acceptance sampling plan described in Table 2 are shown in Table 3. A graphic comparison by drug or drug class of the overall correct response rates of the 13 laboratories in the 1981 CDC blind study with those obtained in the aforementioned five previous studies is presented in the Figure, with supporting data summarized in Table 4.

A summary of results on positive samples by drug for each laboratory in the blind study is provided in Table 5. Similarly, a summary of results on positive samples used in mailed PT surveys 1979 II through 1981 I are listed by drug for each laboratory in Table 6 (quarterly surveys are designated by a number I through IV). Although not listed, there were at least 36 non-drug-containing (negative) samples for each of the drugs per laboratory in both blind and composite mailed PT surveys (except for laboratories B and F in the mailed surveys). A summary of correct response rates on both positive and negative samples is listed in Tables 7 and 8 for the blind study and for the composite of mailed surveys. All laboratories in the study had satisfactory scores in the mailed PT survey before the blind test was performed.

For the drugs used in the evaluation, an increase in correct response rate on positive samples with increased drug concentration was suggested by a x^2 goodness-of-fit test for the drugs—barbiturates ($P<.002$), morphine ($P<.008$), and codeine ($P<.009$)—test results were not significant for o-amphetamine and methadone; methamphetamine and cocaine did not have a range of concentrations amendable to analysis.

COMMENT

The results presented in this article show that the laboratories in the study missed a substantial number of the drug challenges. While the results reflect serious shortcomings in the laboratories, the laboratories are only a part of a complex picture involving also the treatment centers, the clients, and the local, state, and federal governments. As early as 1972, Finkle mentioned the lack of common standards or operational guides among treatment facilities and the absence of "regulations" for analytical practice in the laboratories. Our observations confirm that little has changed even a decade later; contracts between treatment facilities and laboratories lack uniformity in minimum reporting levels, minimum quality-control requirements, and reporting procedures for results. Some treatment facility directors were knowledgeable about the content of their laboratory contracts, but others appeared to have only superficial knowledge of the contract or had no written contract at all.

A possible factor in laboratory behavior resulting in the high level of false-negative errors reported herein may be laboratory perceptions of the kind of results that substantiate progress in the treatment setting. Specifically, negative results are an indicator of successful treatment and the compliance of the patient as well. In addition, they justify the public expenditures for such types of treatment, decrease laboratory costs, and reduce the likelihood that legal means will need to be pursued.

The laboratory behavior leading to low correct response rates on blind samples and generally higher correct response rates on mailed samples does not appear to be the avoidance of testing ("sink testing") in the blind studies; rather, the data suggest less sensitive testing. For example,

Table 7. – Comparison of Laboratory Performance on Positive Samples From Blind Study and Mailed Surveys.*

Drug or Drug Class	Blind Study			Mailed PT		
	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %
Barbiturates	35	41	6-89	36	98	92-100
Amphetamines	44	31	0-81	34	96	92-100
Methadone	41	88	67-100	32	100	97-100
Cocaine	32	36	0-100	28	98	87-100
Codeine†	37	45	0-100	30	91	68-100
Morphine†	36	38	0-95	30	89	69-100

* Correct response rates (CRRs) for 13 laboratories in the Centers for Disease Control test data: 1981 blind study and mailed proficiency testing (PT) surveys 1979 II through 1981 I (quarterly surveys are designated by the numbers I through IV). Laboratory A did not participate in mailed PT survey for 1981 I.

† Service for these drugs was not offered by laboratory F.

Table 8. – Comparison of Laboratory Performance on Negative Samples From Blind Study and Mailed Surveys.*

Drug or Drug Class	Blind Study			Mailed PT		
	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %
Barbiturates	53	100	94-100	38	100	98-100
Amphetamines	49	97	63-100	41	99	97-100
Methadone	51	88	34-100	43	100	98-100
Cocaine	61	99	94-100	46	100	98-100
Codeine†	55	99	93-100	44	99	95-100
Morphine†	56	98	90-100	44	93	92-100

* Correct response rates (CRRs) for 13 laboratories in the Centers for Disease Control test data: 1981 blind study and mailed proficiency testing surveys 1979 II through 1981 I (quarterly surveys are designated by numbers I through IV). Laboratory A did not participate in mailed proficiency testing survey for 1981 I.

† Service for these drugs was not offered by laboratory F.

methadone has the highest correct response rate for both blind and mailed surveys, whereas amphetamines have the lowest for both surveys. This agreement in both testing modes suggests that the minimum reporting levels are higher (less sensitive) in routine testing than in mailed PT. Less sensitive testing may be the primary factor responsible for the high FNRs and comparatively lower FPRs. Less sensitive testing (which means that more drugs will be missed) may result from methodological design, personnel problems, or the reimbursement process. Because contacts are generally awarded to the lowest bidder, with no prior assessment of testing quality, inadequate reimbursement for services may induce the need for a higher throughput of patient samples. If realistic fee schedules were established for drug tests, perhaps more reliable procedures would be established and better-trained personnel would be hired, leading to higher-quality testing.

A large portion of treatment program budgets is spent on urine testing.[7] In 1976, Gottheil et al[4] projected that 30 million urine samples would be tested. Based on this figure and the error rate range that we have observed in blind studies (37% to 69%), the losses resulting from erroneous results alone would range from $37.2 million to $75.6 million. For urine testing to continue as a major instrument in drug treatment facilities, responsible clinicians and treatment directors should move to curb the waste of private and governmental expenditures. Our experience shows that remarkable improvements may be obtained through effective contracting with laboratories followed by monitoring of the quality of services received.

In recent years, the CDC has demonstrated that high-quality urine testing can be obtained from drug-screening laboratories when they are monitored by blind testing. The use of blind testing as a monitoring instrument for large

screening laboratories produced substantial improvements in laboratory performance. Blind testing is highly regarded as a means of obtaining estimates of laboratory error rates.[10]

These studies demonstrate the effectiveness of blind testing as an objective monitoring tool. In this assessment 91% of the laboratories had unacceptable FNRs for barbiturates; 100% for amphetamines; 50% for methadone; 91% for cocaine; 15% for codeine; and 92% for morphine. With automation and computerization such evaluations obtained by monitoring could be reduced to routine activity. Blind testing should be implemented by all those responsible for drug treatment to periodically assess the quality of service being provided.

This study was supported by an interagency agreement with the National Institute on Drug Abuse.

We gratefully acknowledge the assistance of the staff of the Clinical Chemistry and Toxicology Section who prepared the samples used in these studies and the staff of the treatment facilities who provided their time and resources to make this study possible.

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PLAINTIFF'S EXHIBIT 3

EXPRESS–NEWS SAN ANTONIO, TX THURSDAY, SEPTEMBER 19, 1985

Photo by JOE BARRERA, JR.

A CRANE WORKS TO REPLACE SECTIONS OF THE MEDINA RIVER BRIDGE . . . Southern Pacific freight cars damaged the bridge when they derailed

Railroad knew of danger
before spill, employees say

By JEFF DAVIS
Express News Staff Writer

Experienced trainmen said Wednesday a Southern Pacific train derailed and sulfuric acid spilled because a railroad official ordered trainmen to take a "bad load"–bridge timbers not attached to their flatcar.

The bridge timbers shifted to the right late Saturday and struck the south girders of the Medina River bridge when the eastbound train crossed a known "dip" in the south rail

on the wooden trestle approach to the steel span, an engineer said Wednesday.

Three Southern Pacific employees—on condition they not be identified—revealed these and other factors which they say led to the accident, which caused 50,000 gallons of the toxic chemical to spill into the river.

The three, none of whom were crewmen on the train that derailed, predicted railroad officials would try to blame the derailment on employee error after a hearing which began Wednesday.

The trainmen confirmed:

• At least three separate westbound trains spotted a swaying car on the eastbound freight Saturday and radioed a warning to Gary Baird, conductor of the train that later derailed.

"That car was bad ordered—ordered out of service—in El Paso. Some petty official told them, "It's not that bad, take it.' "

" 'Gary, you've got a shifted load,' I heard my conductor tell him," said one railroad employee. "Baird came back and said, 'Yeah, we know about it but they said to take it.' "

• An engineer said he noticed in June a severe dip in the south rail as his eastbound locomotive crossed the wooden trestle approaching the Medina River bridge.

"The whole train leaned to the right, just before the bridge." he said. "I notified the dispatcher and he said they'd put a 20 mph 'slow order' on it. This was at least two months before that arson, before somebody set that car on fire beneath the trestle."

Volunteer firemen Saturday said the derailment might have been caused by incomplete repairs to the scorched trestle after a car was set afire beneath it Aug. 28.

• The timber-carrying flatcar was first noticed and called to the railroad's attention in Tucson, Ariz; another trainman said. He said an inspector took the car out of service in El Paso but the inspector was overruled by another official.

"That car was bad-ordered—ordered out of service—in El Paso," he said. "Some petty official told them, 'It's not that bad, take it.' "

• The bridge timbers, 12 inches by 12 inches and 12 to 20 feet long, were tied in bundles of nine or 12 each, but the bundles were not attached to the car, the trainmen said.

"They were just laying up there and the vibration from the trip could have moved them around," a veteran trainman said.

PLAINTIFF'S EXHIBIT 5

People Helping People

What every UTU member should know about
Employee Assistance Programs

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united transportation union (UTU)
PR SERIES No 9

UTU POLICY ON ALCOHOLISM AND DRUG DEPENDENCY

We sympathize with any man or woman who has a problem with either alcohol or drugs. About 18% of all American have such problems.

We want to help those who need help and also provide a safer work place for the great majority who do not have the problem.

You are entitled to a safe environment within which to carry out your work activities. When this environment is threatened by the unwise use of alcohol or drugs, you have a right to demand its uprooting from the work place, and the UTU's policy is to support you in these efforts.

To adequately deal with this problem requires a firm commitment on the part of labor and management to support soundly developed and administered Employee Assistance Programs that operate on the principle of "shape up or ship out"—not ship out and then shape up. We don't have as many of these sound programs as we need, and until we get them, we will always be threatened by the fetters of Federal regulations.

We need and solicit your support in working with other like-minded people in pursuit of our goal to get these programs going where they don't exist, and to make them better where they do.

People who need help will get it, and a safer place for all to work will result, and the need for Federal intervention will disappear.

Fred A. Hardin
International President

NECESSARY INGREDIENTS FOR AN EFFECTIVE EMPLOYEE ASSISTANCE PROGRAM

1. An understanding of chemical dependency as a health problem.
2. Intervention on the basis of diminished job performance and rule violations.
3. Threat of dismissal used as leverage to get people into programs.
4. Adequate referral mechanisms.
5. Competent people to assess and refer.
6. Assurance of job retention for successfully rehabilitated problem drinkers.
7. Use of outpatient treatment agencies.
8. Adequate insurance coverage.
9. Integral role for labor.
10. Systematic ongoing evaluation.
11. Confidentiality.
12. Better record keeping to serve evaluation, confidentiality and insurance needs.
13. Adequate program promotion efforts.
14. Reducing the incidents of drinking problems, i.e., prevention

ABOUT THIS BOOKLET . . .

The United Transportation Union for the past 15 years has been in the forefront in the development and implementation of Employee Assistance Programs.

The UTU has been in the front ranks of those seeking answers to the different and difficult problems of alcohol and other drug dependencies that adversely affect the health and lives of many Americans. Some of these victims are to be found in our industry, in our union and in our homes. Because they need help we offer ours.

Our concern about this major health problem has been translated into involvement in effective company-based programs called employee assistance programs. These programs are designed to help those among us unfortunate enough to be caught in or headed for the addictive web of alcohol or other drugs.

Concern for the safety, health and well-being of our members and their families is reason enough for all of us to cooperate in the development and implementation of these "helping hand" programs of human restoration.

Coping with the problems of chemical abuse or dependency is not, in the final analysis, a labor or a management problem. It is a human and a family problem that looks for its solution within our industry, within our union and in the larger community of mankind.

Everyone in the United Transportation Union family should be committed to the development and implementation of these people-serving programs.

TABLE OF CONTENTS

WHAT IS ALCOHOLISM OR DRUG DEPENDENCY?

What is alcoholism and how do I recognize it when I see it?

Defined by the American Medical Association and the World Health Organization as a disease, alcoholism is uncontrolled drinking. It is a state of drinking where alcohol becomes the be-all and end-all of existence. In its chronic, addictive state one drink inevitably leads to another, and then another until a condition of total intoxication or stupor is reached. In contrast, responsible use of alcoholic beverages is characterized by the appropriateness of the occasion and a consideration of one's personal welfare and that of others. Uncontrolled, destructive drinking marks the alcoholic.

During the course of its development, which ranges from months to years, personal health, work, family and social relations are all jeopardized. Finally, even the familiar, commonplace things like driving a car, or organizing a household, are no longer manageable. If alcoholism does not always have a clear-cut beginning, its end is all too certain—physical and mental disability, death.

The course of alcoholism takes many twists and turns. There are cases where the alcoholic may remain sober for weeks, even months. Such periodic attempts by the alcoholic to stay sober in the effort to demonstrate that drinking is under control can be a symptom of the illness. The alcoholic may be trying to pretend he can control his drinking when really he can't. Despite long periods of abstinence, the alcoholic usually returns to his uncontrolled drinking when he resumes drinking.

Drug abuse, because it takes many forms and involves many different kinds of substances, is not easy to define.

Drug abuse may refer to the consumption, without medical authorization, of medically useful drugs which have the capacity to alter mood or behavior. It may also refer to the ingestion of a medically useful mood-altering drug for a purpose other than that for which it was prescribed.

Drug abuse also describes any use—except for medical research—of mind-changing drugs and substances having no legitimate medical application.

Employees who are drug abusers do everything possible to conceal their habits. Therefore, it is important to recognize the signs, symptoms and paraphernalia of drug abuse.

COMMON SYMPTOMS OF ALCOHOLISM

Alcoholics differ in backgrounds and experiences. There are, however, certain common symptoms and behavior patterns that identify the alcoholic. It would be rash to make a judgment based on such surface signs as a flushed face, bleary eyes, and slurred speech. These may be present, but a combination of the following symptoms is a more certain sign of destructive drinking:

- The inability to stop at one or two drinks
- Increased dependency on alcohol
- The inability to remember what occurred during drinking bouts
- Passing out when drinking
- Drinking alone
- The need for a drink the next morning
- Feelings of guilt and remorse
- Attempts to hide drinking
- Increase in the amount of alcohol consumed
- "Gulping" drinks
- Lateness and absenteeism at work

- Neglect or indifference to personal appearance
- Neglect of other financial obligations to pay for alcohol
- Family quarrels and family tensions over drinking
- Lateness in returning home with a growing number of excuses (or, perhaps offering no excuse at all)
- Changes in eating and sleeping habits
- Increased irritability
- Hostile and belligerent behavior when drinking
- Hand tremors and increased nervousness
- Falling, stumbling, or other types of unstable behavior
- Hiding and protecting liquor supply
- Repeated attempts at abstinence
- The angry denial that one has a drinking problem, usually accompanied with a strong "alibi system" to excuse, explain, or minimize increased drinking
- In its terminal phases, impairing such vital organs as the brain, liver, and gastrointestinal system

COMMON SYMPTOMS OF DRUG ABUSE

1. Changes in attendance and discipline.
2. Unexplained changes in the performance of work or responsibilities.
3. Unusual flare-ups or outbreaks of temper.
4. Poor physical appearance including inattention to dress or personal hygiene.
5. Wearing of sunglasses at inappropriate times to hide dilated or constricted pupils.
6. Unusual effort made to cover arms in order to hide needle marks.
7. Association with known drug abusers.
8. Borrowing of money from other employees to purchase drugs.

9. Stealing small items from work that can be readily sold for cash (to support habit).
10. Finding the employee in odd places during normal working hours such as closets, storage rooms and excessive time in the lavatory.

HOW CURRENT EAP STANDARDS WERE SET

Historical Background

The need for employee alcoholism/assistance program standards has long been recognized by the major organizations in the occupational alcoholism field—the Association of Labor-Management Administrators and Consultants on Alcoholism (ALMACA), the National Council on Alcoholism (NCA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the Occupational Program Consultants Association (OPCA).

At NCA's Annual Forum in St. Louis, Missouri, in 1978, six individuals from six different agencies made a joint presentation entitled, "Issues of the Day." Although the papers had all been prepared independently of one another, the same need was perceived by all six participants—a need for a set of standards which could be used to evaluate existing occupational alcoholism programs.

Earlier in 1978, NCA's Labor-Management Committee had instructed NCA staff to help develop program standards for evaluation purposes. A subcommittee was named to work on this project. During the data-gathering process, the NCA staff became convinced that any program standards developed unilaterally by them (or by any panel chosen exclusively by them) would not be nearly as effective as similar standards developed by a group with a much broader base.

For this reason, NCA called a meeting at its Annual Forum in Washington, D.C. in 1979, to which it invited representatives of ALMACA, the federal government and organized labor. The joint decision of this group was to form a blue-ribbon committee to develop occupational alcoholism program standards. The committee was to be chosen in this way: Five members were to be named by NCA; five by ALMACA; three by labor, and two by the federal government. It was further decided that NCA and ALMACA would each name three corporate program heads, one private consultant and one individual who was operating a consortium. A representative was also to be named by OPCA.

The blue-ribbon Program Standards Committee held its first meeting in New York City on January 14, 1980.

Committee List

The following are the names of those who currently serve on the Standards Committee:

Mary Bernstein, Manager
Special Health Services, East
Trans World Airlines, Inc.
Jamaica, N.Y.

Doris E. Cohen, Executive Director
NCA-Delaware Valley Area, Inc.
Philadelphia, PA

Bill Combs, Director
Alcoholism Program
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John J. Connors
New England Gas & Electric
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John Gorman, Manager
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Herman J. Heise, Director
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STANDARDS FOR EMPLOYEE ALCOHOLISM AND/OR ASSISTANCE PROGRAMS

1. POLICY AND PROCEDURE

1.1 Policy Statement

An organization shall adopt a written policy statement on alcoholism and other problems covered by the EAP. This will be signed by the chief executive and union head where appropriate, and will reflect management and labor attitudes and agreements as to the Program's objectives. The policy should state that alcoholism is a disease responsive to treatment and rehabilitation and specifying the responsibilities of management, union representatives, and employees as they relate to the Program. The EAP need not in any way alter management's responsibility or

authority or union prerogatives. Participation in the EAP will not affect future employment or career advancement, nor will participation protect the employees from disciplinary action for continued substandard job performance or rule infractions.

1.2 Confidentiality

Written rules will be established specifying how records are to be maintained, for what length of time, who will have access to them, which information will be released to whom, and under what conditions, and what use, if any, can be made of records for purposes of research, evaluation and reports. Client records maintained by an EAP should never become part of an employee's personnel file. Adherence to Federal regulations on confidentiality of alcohol and drug abuse records (42 CFR Part 2) is required of Programs even indirectly receiving Federal funds.

1.3 Procedures for individuals referred by management and/or union representatives

Each EAP will prepare written procedures for action initiated by management and/or union representatives. This will provide an assessment by EAP staff, evaluation by professionals, referral for treatment, feedback to and from the referral source and follow-up. For alcoholism cases there should be a follow-up at least monthly for a minimum of one year.

1.4 Procedures for voluntary use of the Program by employees/family members

Procedures for individuals who refer themselves will provide for assessment by EAP staff, evaluation by professionals, referrals for treatment and follow-up. The Pro-

gram will initiate no contact with management concerning individuals who refer themselves, consistent with confidentiality regulations.

2. ADMINISTRATIVE FUNCTIONS

2.1 Organizational position of the EAP

Operation of or responsibility for the EAP should be positioned at an organization level high enough to insure the involvement of senior management and/or union leadership in sustaining the Program.

2.2 Physical location of the EAP

The physical location of the EAP should facilitate easy access while insuring confidentiality.

2.3 Record-keeping system

Each EAP will have a record-keeping system carefully designed to protect the identity of the client, while facilitating case management and follow-up and providing ready access to statistical information.

2.4 Relation of the EAP to medical and disability benefit plans

There should be a review of medical and disability benefits to insure that plans adequately cover appropriate diagnosis and treatment for alcohol, drug, and mental health problems. Where feasible, coverages should include outpatient and day treatment care. The EAP staff should be familiar with provisions of the medical and disability benefit plans so they can advise clients clearly as to the extent, nature and cost of the recommended treatment and reimbursement available.

2.5 Malpractice/liability insurance

The organization should contact a legal review of all aspects of the Program. The purpose is to ensure that there should be adequate protection for all EAP staff and the Organization against possible malpractice/liability claims.

2.6 Qualifications of EAP staff

The EAP staff should combine two primary qualifications:

1. Appropriate managerial and administrative experience.
2. Skills in identifying problems, interviewing, motivating, referring clients, and, where appropriate, in counseling or related fields. Experience and expertise in dealing with alcohol-related problems are essential.

3. EDUCATION AND TRAINING

3.1 Communicating EAP services to employees and their families

It is important that employees and their families are informed about the organization's EAP and the services it offers and are continually updated by various educational techniques on its existence and availability. Information about the EAP should be made available to all new employees and their families.

3.2 Employees education

An organization should have a major commitment to ongoing education about alcohol use and alcoholism. Additional efforts should be made to educate employees about other recognized problem areas.

3.3 Orientation of management and union representatives

Management and union representatives should be thoroughly informed about their key role in utilizing the EAP services. Orientation for management and union representatives should be updated regularly.

4. RESOURCES

4.1 Resource file on providers of assistance

Each EAP should maintain current information about alcoholism treatment services and other resources. These include Alcoholics Anonymous, Al-Anon, Alateen, and other self-help groups, appropriate health care, community services and other professionals.

5. EVALUATION

5.1 Program review and evaluation

There should be a periodic review of the Program to provide an objective evaluation of operation and performance.

5.2 Staff performance evaluation

There should be an annual evaluation review of EAP staff performance.

OPERATION RED BLOCK

Operation Red Block is a comprehensive drug and alcohol prevention program that urges employees to take personal responsibility in handling drug and alcohol use on the job.

The emphasis is on PREVENTION.

Operation Red Block compliments existing Employee Assistance Programs by making it possible to help employees rather than punish them.

Initiated by the UTU and BLE on the Union Pacific in 1983 with the support of UP management, Operation Red Block is based on the idea that most employees want to work in an environment free of the risks induced by alcohol and drugs.

The program, which has spread to several other railroads, is being promoted as an alternative to Federal rules on alcohol and drug problems.

The UP program encourages employees say: "I've looked away long enough." In brochures and other promotional material, Operation Red Block is hailed as a program to save jobs, not take them away.

A brief description of UP's five-step Operation Red Block follows:

For as long as there has been a Rule "G", there has been that silent majority of employees who **want** to work in an environment free of the risks induced by alcohol and drugs.

Now the Brotherhood of Locomotive Engineers and the United Transportation Union and Union Pacific System are responding with a revolutionary, five-step drug and alcohol prevention program:

Step One – Policy Statement

Local organizations confirm through policy statements to members that they endorse their internationals' position: "We do not condone the use of alcohol or drugs while on duty."

Step Two – Prevention Committee

Participating locals form prevention committees to field complaints about members using drugs or alcohol while on duty. Committees insist that users quit and urge them

to contact an Employee Assistance Counselor if they need help.

Step Three – Rule "G" Bypass Agreements

Locals ratify a Rule G Bypass Agreement that allows members to confront other members who use drugs and alcohol while on duty and refer them to the Employee Assistance Program for counseling – all without loss of job, threat of punitive action or marring of personnel records. This "bypass" around normal Rule G discipline is afforded only one time in a career.

Step Four – Companion Agreement

Once local operating crafts have distributed their policy statements, established the action committee and ratified the bypass agreement, Union Pacific System places in effect the Rule "G" Companion Agreement. This makes it possible for an employee without a previous Rule G violation to return to service during a 12-month probationary period provided that the employee participates in the Employee Assistance Rehabilitation or Education Program, depending upon individual needs.

Step Five – Operation Red Block

Concurrent with Steps One through Four, the BLE- and UTU-sponsored information and awareness program, "Operation Red Block," described in this brochure will be conducted.

INSURANCE FOR TREATMENT OF ALCOHOLISM

To exhibit its sincere interest in helping employees rehabilitate themselves, the UTU has improved its health

and welfare plan under Group Policy GA-23000 to insure that the cost to employees will be almost negligible.

The plan now covers confinement of an employee and dependents in a treatment center because of alcoholism or chemical dependency.

Other improvements in the Treatment Center Expense Benefits, effective July 1, 1984, are:

The $2,000 limit for the first confinement increased to $5,000 plus 80% of the charges over $5,000 up to 30 days.

Benefits for the second confinement have been increased to $3,000 plus 80% of the charges over $3,000 over 30 days.

Coverage added for approved transportation to a Treatment Center for confinement. After satisfaction of $100 deductible, the plan pays 80% of reasonable charges up to $500 for each covered confinement.

Coverage added for out-patient treatment in a Treatment Center or licensed out-patient facility. The plan provides for two, 12-month benefit periods in a lifetime with a limit of 30 treatments for each benefit period. After satisfaction of $100 deductible for each benefit period, the plan pays 80% of covered charges up to $40 per treatment.

Under coverage provided by GA-23000, the confinement must be based on a written recommendation of the attending phsycian, a duly qualified alcohol rehabilitation counselor or an alcoholism paraprofessional.

For information about exclusions under the plan, consult the booklet on Group Policy GA-23000.

NORTH AMERICAN RAILROADS WITH EMPLOYEE ASSISTANCE PROGRAMS

Akron, Canton & Youngstown
Alton & Southern
Amtrak
Atchison, Topeka & Santa Fe
Baltimore & Ohio
Bessemer & Lake Erie
British Columbia
Burlington Northern
Canadian National
Canadian Pacific
Central of Vermont
Chesapeake & Ohio
Chicago & Eastern Illinois
Chicago, Milwaukee, St. Paul & Pacific
Chicago & Northwestern
Conrail
Denver & Rio Grande Western
Duluth, Missabe & Iron Range
Elgin, Joliet & Eastern
Grand Trunk Western
Green Bay & Western
Houston Belt & Terminal
Illinois Central Gulf
Indiana Harbor Belt
Lake Terminal
Long Island
Louisville & Nashville
Metro North
Missouri Pacific
Newburgh & South Shore
Norfolk & Western
Port Terminal Railroad Assn.

St. Louis-San Francisco
St. Louis Southwestern
Seaboard Coast Line
Soo Line
Southern Railway
Southern Pacific
Terminal Railroad Association
Texas & Pacific
Union Pacific
Union Railway
Western Maryland
Western Pacific

BUS COMPANIES WITH EAPs

Southern California Rapid Transit District

THE UTU RECOMMENDS:

Starting with the pioneer effort in the early 1950's, the North American rail industry has progressed to more than 40 programs aimed at helping people with alcohol problems. More are being planned.

Thousands of problem drinkers have benefitted, saving their jobs and also helping the industry to curb drinking-related losses estimated at nearly 500 million dollars annually through absenteeism, lost productivity, injuries, damages, grievances and other problems.

Because it costs more to dismiss a problem drinker than it does to rehabilitate him, a company profits from a sound Employee Assistance Program. And the benefit to the rehabilitated employee and his or her family cannot be measured in dollars alone.

If your company has a program already established, learn all you can about it. Find out who is eligible for assistance, where it is provided, and by whom.

Many of the programs more recently developed have had local joint labor-management participation from the start and there are usually labor members on the joint committee which oversees the program. Find out who these members are, and invite them to discuss the program with the members of your local union. If your company does not have an Employee Assistance Program, approach your union representative about starting such a program and ask him to form a committee of concern to talk to management about starting an Employee Assistance Program with labor participation.

UTU Headquarters can furnish you with information about alcoholism and provide samples of such things as policy statements, procedures in the operation of programs, costs, etc. UTU will also provide consultation to any company and its unions who are interested in establishing a program.

STAY INVOLVED

After a program is started – stay involved, help where and when you can by becoming a "resource person" in the program. If you are a recovered alcoholic, you can be especially helpful to the counselor. Remember the program can only help others if you help the program.

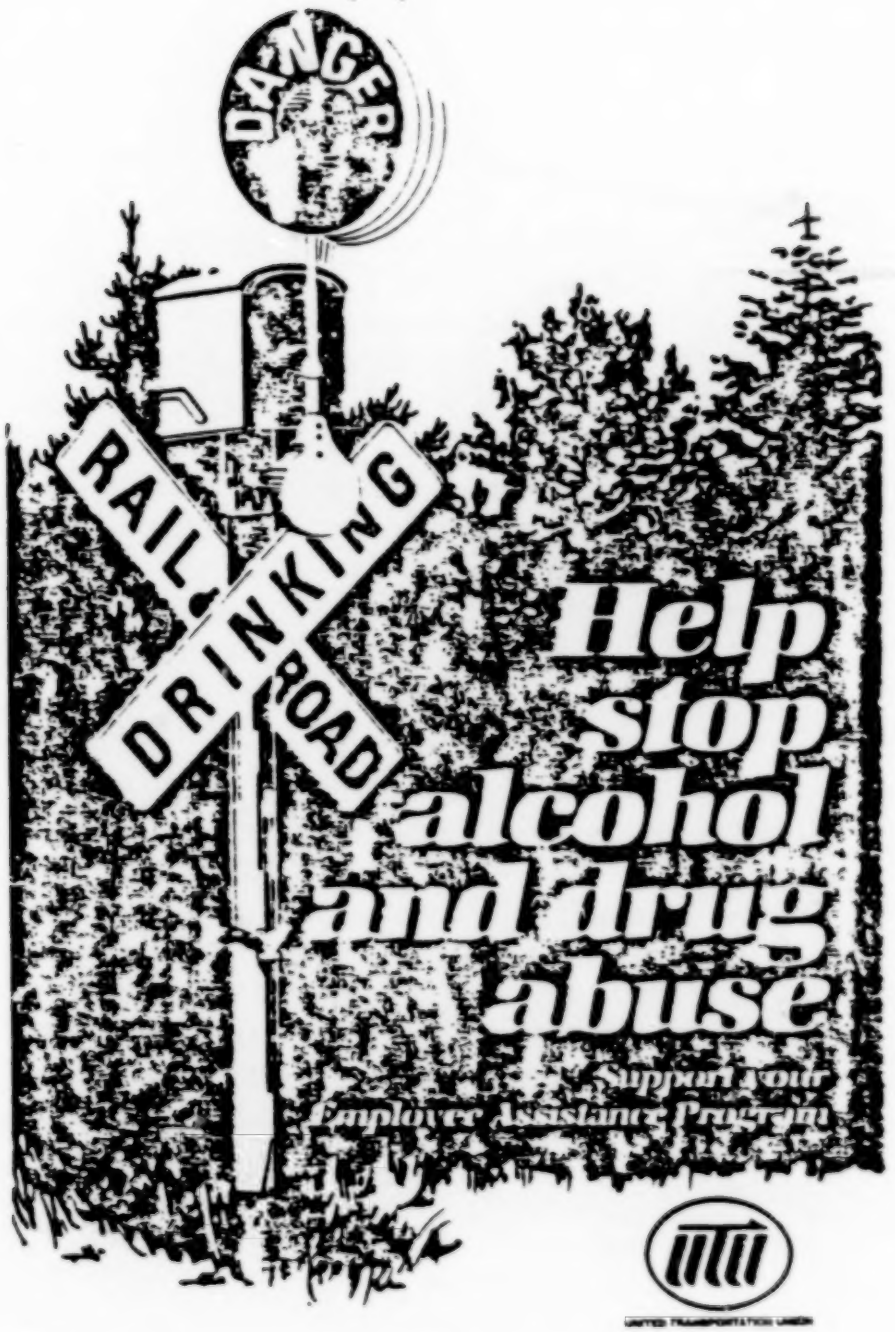
Learn as much as you can about the problems of alcohol and drug abuse. Literature on the subject can be obtained locally by contacting Alcoholics Anonymous groups, specialized treatment centers, clinics and hospitals, or local councils, and commissions often supported by United Way Agencies.

Do something with this learning by supporting needed referral and treatment centers in your community.

For more information, contact UTU Headquarters at the following address: **United Transportation Union, 14600 Detroit Ave., Cleveland, Ohio 44107** or an EAP counselor on your railroad or bus company.

PREVENTION AND RULE 'G' DISCIPLINE OPTION

	Prevention Committee	**Rule G By-Pass Agreement**	**Companion Agreement**	**Rule G**
Initial Action	(1) talk with employee (2) request employee mark-off	fellow employee notifies co-officer of unsafe employee	Co-Officer removes employee from service Notify employee by letter of option to see E.A. Counselor	Co-Officer removes employee from service
Investigation	No	No	Yes, unless waived	Yes
Role of Employee Asst. Counselor	None	determines when employee is safe to return to work and provides rehabilitation/ education	determines when employee is safe to return to work and provides rehabitation/ education	Works with employee during rehabilitation education
When employee can return to service	Next shift	when E.A. Counselor determines employee is safe to work	when E.A. Counselor determines employee is safe to work	approximately 6 months at a minimum, generally longer
Probation	None	None	12 months	minimum 6 months after returning to service
Effect on personal records	None	Note indicating By-Pass has been used	Shows employee has completed process per agreement	Shows employee received Rule 'G'
Effect on employment	None	None	None	With 2nd Rule 'G' violation permanently dismissed unless reinstated public law board



PLAINTIFF'S EXHIBIT 4

OFFICE OF SUPERINTENDENT
TAMPA DIVISION
TAMPA, FLORIDA

SEABOARD SYSTEM RR CO.

OCTOBER 23, 1985

PERSONNEL: ALCOHOLISM

CIRCULAR 182

ALL CONCERNED:

UNDER FEDERAL RAILROAD ADMINISTRATION (FRA) SAFETY REGULATIONS, RAILROAD EMPLOYEES MAY BE REQUIRED TO PROVIDE A URINE SAMPLE AFTER CERTAIN ACCIDENTS AND INCIDENTS OR AT ANY TIME THE COMPANY REASONABLY SUSPECTS THAT THEY ARE UNDER THE INFLUENCE OF, OR IMPAIRED BY, DRUGS WHILE ON DUTY. BECAUSE OF ITS SENSITIVITY, THE URINE TEST MAY REVEAL WHETHER OR NOT EMPLOYEES HAVE USED CERTAIN DRUGS WITHIN THE RECENT PAST (IN A RARE CASE, UP TO SIXTY DAYS BEFORE THE SAMPLE IS COLLECTED). AS A GENERAL MATTER, THE TEST CANNOT DISTINGUISH BETWEEN RECENT USE OFF THE JOB AND CURRENT IMPAIRMENT. HOWEVER, THE FEDERAL REGULATIONS PROVIDE THAT IF ONLY THE URINE TEST IS AVAILABLE, A POSITIVE FINDING ON THAT TEST WILL SUPPORT A PRESUMPTION THAT THE EMPLOYEE WAS IMPAIRED AT THE TIME THE SAMPLE WAS TAKEN.

EMPLOYEES CAN AVOID THIS PRESUMPTION OF IMPAIRMENT BY DEMANDING TO PROVIDE A BLOOD SAMPLE AT THE SAME TIME THE URINE SAMPLE IS COLLECTED. THE BLOOD TEST WILL PROVIDE INFORMATION PERTINENT TO CURRENT IMPAIRMENT. REGARDLESS OF THE OUTCOME OF THE BLOOD TEST, IF EMPLOYEES PROVIDE A BLOOD SAMPLE THERE WILL BE NO PRESUMPTION OF IMPAIRMENT FROM A POSITIVE URINE TEST.

THE ILLEGAL USE OF A DRUG, NARCOTIC OR OTHER CONTROLLED SUBSTANCE WHILE ON OR OFF DUTY IS PROHIBITED. AN EMPLOYEE WILL BE REMOVED FROM SERVICE IF ANY EVIDENCE OF AN ILLEGAL DRUG, NARCOTIC OR OTHER CONTROLLED SUBSTANCE IS FOUND IN THE URINE, AS INDICATED BY A TEST OF THE URINE, OR IN THE BLOOD, AS INDICATED BY A BLOOD TEST.

IF EMPLOYEES HAVE USED ANY DRUG OFF THE JOB (OTHER THAN A MEDICATION THEY POSSESSED LAWFULLY) IN THE PRIOR SIXTY DAYS, IT MAY BE IN THEIR BEST INTEREST TO PROVIDE A BLOOD SAMPLE. IF EMPLOYEES HAVE NOT MADE UNAUTHORIZED USE OF ANY DRUG IN THE PRIOR SIXTY DAYS, THEY CAN EXPECT THAT THE URINE TEST WILL BE NEGATIVE, AND MAY NOT WISH TO PROVIDE A BLOOD SAMPLE.

EMPLOYEES ARE NOT REQUIRED TO PROVIDE A BLOOD SAMPLE AT ANY TIME EXCEPT IN THE CASE OF CERTAIN ACCIDENTS AND INCIDENTS SUBJECT TO FEDERAL POST-ACCIDENT TESTING REQUIREMENTS (49 CFR PART 219, SUBPART C).

A COMPLETE COPY OF THE FEDERAL REGULATIONS IS AVAILABLE FOR YOUR REVIEW AT THE OFFICE OF YOUR SUPERINTENDENT OR DEPARTMENT HEAD.

LL/L5/85 CC: LAWRENCE MANN, Attorney

PLAINTIFF'S EXHIBIT 3

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(WESTERN DIVISION)
018-12

Oakland, October 29, 1985

SPECIAL NOTICE NO. 5

ALL CONCERNED:

Following is added to Special Notices and Instructions – All Employes, dated July 1, 1984, VIII, OTHER INSTRUCTIONS GOVERNING PERSONNEL – 3.0-, 8:

1. Federal Railroad Administration (FRA) Safety Regulations – Authorized, covering Control of Alcohol and Drug Use in railroad operations become effective November 1, 1985 and apply to employees engaged in Hours of Service occupations (covered service), and requires the following notice:

> "Under Federal Railroad Administration (FRA) safety regulations, you may be required to provide a urine sample after certain accidents and incidents or at any time the company reasonably suspects that you are under the influence of, or impaired by, drugs while on duty. Because of its sensitivity, the urine test may reveal whether or not you have used certain drugs within the recent past (in a rare case, up to *sixty* days before the sample is collected). As a general matter, the rest [sic] cannot distinguish between recent use off the job and current impairment. However, the Federal regulations provide that if only the urine test is available, a positive finding on that test will support a presumption that you were impaired at the time the sample was taken.
>
> You can avoid this presumption of impairment by demanding to provide a blood sample at the same time the urine sample is collected. The blood test will provide information pertinent to current impairment. Regardless of the outcome of the blood test, if you provide a blood sample there will be no presumption of impairment from a positive urine test.
>
> If you have used any drug off the job (other than a medication that you possessed lawfully) in the prior sixty days, it may be in your interest to provide a blood sample. If you have not made unauthorized use of any drug in the prior sixty days, you can expect that the urine test will be negative; and you may not wish to provide a blood sample.
>
> You are not required to provide a blood sample at any time, except in the case of certain accidents and incidents subject to Federal post-accident testing requirements (49 C.F.R. Part 219, Subpart C).
>
> A complete copy of the Federal regulations is available for your review at 1707 Wood Street. Oakland, CA. 94607.

A railroad that has a policy that forbids off-the-job use of drugs (not involving a specific proof that the employee is under the influence of the substance or impaired by it on the job) must include in such a notice a statement concerning any additional consequences of a positive urine test."

2. NOTICE AND POLICY OF SPTCo. AND SSW

It is the policy of SPTCo. and SSW and has been for a number of years that a violation of Rule "G" will subject

an employee to appropriate disciplinary action. Following is a quote of SPTCo.-SSW Rule "G":

> "The use of alcoholic beverages or intoxicants by employes subject to duty, or their possession, use, or being under the influence thereof while on duty or on Company property, is prohibited.
>
> Employes shall not report for duty under the influence of, or use while on duty or on Company property any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety. Questionable cases involving prescribed medication shall be referred to a Southern Pacific Medical Officer.
>
> The illegal use, possession or sale while on or off duty of a drug, narcotic or other substance which affects alertness, coordination, reaction, response or safety, is prohibited. (Effective April 30, 1982)."

When toxicological tests, including urine, indicate the illegal use on or off duty of a drug, narcotic or other substance which affects alertness, coordination, reaction, response or safety the employee will be subject to appropriate disciplinary action. At the time a urine sample is collected an employee may request a blood sample be collected.

SPTCo. and SSW will continue its alcohol and drug identification efforts under its obligation to provide a safe place for its employees to work. Additional urine tests may be conducted for just and reasonable cause, reasonable suspicion, accident/incident and certain rule violations that affect the safety of the employee and the safety of the railroad operation.

L. P. Marsh
Superintendent

National Transportation Safety Board
Washington, D.C. 20594

Office of the Chairman FEB 10 1986

Honorable Edwin Meese III
Attorney General of the United States
Department of Justice
Room 5111
Constitution Avenue and Tenth Street, N.W.
Washington, D.C. 20530

Re: *Railway Labor Executives Association, et al.* v. *Elizabeth Dole, Secretary, Department of Transportation, et al.*
(No. 85-2891 9th Cir.)

Dear Mr. Attorney General:

The purpose of this letter is to express the grave concerns of the National Transportation Safety Board (Board) regarding the above-captioned litigation in that it poses an immediate threat to railroad transportation safety. The Justice Department is currently representing the Federal Railroad Administration (FRA) in that suit which seeks to block an FRA rule requiring, among other things, postaccident toxicological testing of railroad crewmembers. The Board, as an independent agency charged by Congress with the formulation of proposals to improve transportation safety, was a principal catalyst for this rule. We are convinced the rule would have a significant, positive impact on railroad transportation safety. We therefore urge you to vigorously oppose the challenge to this critical rule.

Since its creation in 1966, the Board has served as the lead Federal agency for the investigation of every civil aircraft accident and of major accidents in the other modes of transportation, i.e., railroad, marine, pipeline, and highway. Congress established the Board in 1974 as a completely independent agency because of the recognition that the proper conduct of the responsibilities of the Board "requires vigorous investigation of accidents involving transportation modes regulated by other agencies of Government. . . ." 49 U.S.C. § 1901(2). Congress therefore, charged the Board with the responsibility to "promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations." 49 U.S.C. §1901(1). To ensure that the Board's actions receive widespread attention, the Board is required to determine and publicly report the facts, conditions, circumstances, and probable cause(s) of the accidents it investigates. 49 U.S.C. §1903(a)(2). The core accident prevention mission of the Board is accomplished through the identification of measures to prevent accidents—safety recommendations designed to preclude accidents and to avoid or at least lessen human injuries. 49 U.S.C. § 1903(a)(3).

The Board has the well-earned reputation as the world's foremost authority on the investigation of transportation accidents, and the methods and investigative techniques we have developed, particularly in aviation, are used as models throughout the world. Since the Board does not regulate any mode of transportation and since its sole mission is the promotion of transportation safety, the Board's only constituency is the public. The Board is free, and feels free, to critically but objectively assess the safety of the transportation network. As the primary Federal agency responsible for the investigation of transportation

mishaps, the Board occupies a unique position for pinpointing shortcomings in a transportation system and for proposing means to combat safety problems. One such chronic problem is the influence of alcohol and drugs on railroad crewmembers, the full dimensions of which are unknown.

The Board has long been concerned about the role of alcohol and drugs in railroad accidents. Recent railroad accidents involving alcohol/drug abuse have heightened its concern. In 18 cases investigated or under investigation by the Safety Board in which alcohol and drug use was involved, 13 railroad employees were killed, 25 employees were injured, and property damage was reportedly in excess of $25 million. Of paramount concern to the Board is the protection of the public and railroad employees who are placed in life-threatening situations by railroad employees who may be under the influence of alcohol and/or drugs.

An even more looming danger is the risk of release of hazardous materials that today's trains transport daily in thousands of carloads. These hazardous materials are extremely dangerous and some are potentially violent, capable of creating devastating explosions and/or fireballs. Other materials are extremely poisonous, threatening people in the surrounding area of a railroad accident with both immediate and long-term health hazards. A particularly chilling train derailment highlights this threat to the public's safety:

> On September 28, 1982, an Illinois Central Gulf Railroad Company (ICG) freight train, No. Extra 9629 East, derailed near Livingston Louisiana.[1] In-

[1] See National Transportation Safety Board (NTSB) Railroad Accident Report, "Derailment of Illinois Central Gulf Railroad Freight Train Extra 9629 East (GS-2-28) and Release of Hazardous Materials at Livingston, Louisiana, September 28, 1982" (NTSB/RAR-83/05).

volved in the derailment were 43 cars, of which 14 were tank cars containing various hazardous materials. The hazardous materials included vinyl chloride, methyl chloride, motor fuel "antiknock" compound (tetraethyl lead), hydrofluosilic acid, metallic sodium, styrene monomer, phospheric acid, and toluene diisocyanate. In the fire following the accident, two of the tank cars violently rocketed, and smoke and toxic gases were released into the atmosphere. As a result of the accident, approximately 3,000 people who lived within 5 miles of the accident site were evacuated for periods as long as 2 weeks. Several homes were burned and destroyed. Many residents never returned to their homes. Property damages and losses have been estimated in excess of $14 million. The court settlement has been reported at $38 million.

During its investigation of this accident, the Board found evidence that the crewmembers had consumed alcoholic beverages before reporting for duty and while on duty even though the railroad had a rule which prohibited such consumption before reporting for duty and while on duty, commonly denoted as Rule G. The engineer and brakeman were seen in a drinking establishment and were observed to have consumed alcohol beverages before and after reporting for work.

Less than a week later, on October 3, 1982, a Missouri Pacific Railroad Company (MP) freight train, No. MP Extra 2437 South, collided with the side of train No. MP Extra 2948 North, which was moving through a switch at Glaise Junction near Possum Grape, Arkansas.[2] The

[2] See National Transportation Safety Board Railroad Accident Report – "Side Collision of Two Missouri Pacific Railroad Company Freight Trains at Glaise Junction, Near Possum Grape, Arkansas, October 3, 1982" (NTSB/RAR-83/06).

engineer and head brakeman of train No. MP Extra 2437 South were both killed in the side collision. Property damage was estimated at $1 million.

The fatally injured engineer of train No. MP Extra 2437 South had a tested blood alcohol level (BAL) of 0.04 percent and other evidence of alcohol in his system. The Board believes that there is considerable research available that indicates performance deterioration at even low levels of alcohol intake. (See enclosures.)

As a result of its investigation of an accident at Indio, California,[3] the Safety Board recommended on March 20, 1974, that: "The Federal Railroad Administration include in [its] proposed Standards for Rules Governing the Operation of Trains, regulations that will in effect prohibit the use of narcotics and intoxicants by employees for a specified period prior to their reporting for duty and while they are on duty, (Recommendation R-74-9)." As a result of this recommendation, the FRA revised its accident causal codes and added a specific code to obtain data on the alcohol and drug abuse problem. Additionally, the FRA supported the cooperative labor-management Railroad Employees Assistance Programs (REAP), directed at helping the problem drinker. The Safety Board has commended the FRA for these efforts. However, the Safety Board believes these efforts have only indirectly addressed the primary safety issue – the need for a strong deterrent to the use of alcohol and drugs by railroad operating employees.

[3] See National Transportation Safety Board Railroad Accident Report – "Rear-end Collision of Two Southern Pacific Transportation Company Freight Trains, Indio, California, June 25, 1972" (NTSB-RAR-74-1).

A 1979 report prepared for the FRA[4] examined the drinking practices of 234,000 railroad workers on seven railroads during 1978. Some of the findings of this study were:

- There were an estimated 175,000 drinking rule violations in 1978.
- Twelve percent, or 28,000, of the workers in the study drank alcoholic beverages on an average of 3 days while on duty in 1978.
- Five percent, or 11,000, workers were "very drunk" at least once upon reporting for duty or while on duty. Fifteen percent, or 35,000, workers were a "little drunk" at least once upon reporting for duty or while on duty.
- The highest percentage of problem drinkers is found among the operating craft employees. (Twenty-three percent, or about 16,000, of the 72,000 operating personnel studied are problem drinkers.)
- 7,000 of the 234,000 workers reported seeing an alcohol-related train accident.

One of the most significant conclusions of this study states, "There is evidence that employee drinking is an important contributing factor to railway accident, but the connection between drinking and safety is not being adequately investigated."

Even though the FRA has added a specific accident reporting code to collect data on the alcohol-drug abuse problem, one of the major difficulties in addressing the alcohol/drug abuse problem continues to be inadequate statistics. As stated by the Administrator of the FRA on

[4] T.A. Manello and F.J. Seaman, "Prevalence, Costs and Handling of Drinking Problems on Seven Railroads," December 1979 (DOT-TSC-1375).

June 24, 1982, ". . . if you look at the FRA safety reporting code, the document which requires one to indicate whether an accident was drug or alcohol-related, you find the most sober industry on the face of the earth."[5] The Administrator referred to 1975-1981 FRA accident statistics which show that of 63,900 accidents reported, only 11 accidents were reported to have been related to alcohol-drug abuse. During the same period, there were 741 reported fatalities, of which only 3 fatalities were the result of alcohol-drug abuse, according to FRA statistics. The Administrator in that same speech acknowledged that ". . . the records are wrong."

Investigation of accidents has been hampered because toxicological tests for alcohol-drug use are not made after serious railroad accidents when the employees responsible for the operation of the train are not fatally injured. Only when crewmembers are killed are such tests generally performed. For example, in the Glaise Junction accident near Possum Grape, Arkansas, which involved fatalities among the crewmembers, toxicological tests were immediately taken, and the facts were clearly documented. However, in the Livingston, Louisiana, accident, toxicological tests were not taken since there was no fatality. The Board believes that railroad safety would be greatly improved if employees knew that toxicological tests would be taken of the surviving employees as well as of those fatally injured in the event of a railroad accident that is required to be reported to the FRA or to the Board involving: (1) a fatality, (2) a passenger train, (3) a significant release of hazardous materials, (4) an injury, or (5) substantial property damage.

[5] Honorable Robert W. Blanchette, Administrator, FRA, remarks before the 1982 Conference on Innovative Approaches for Dealing with Alcohol and Drug Abuse Problems in the Railroad, June 24, 1982, New Orleans, Louisiana.

The Board is extremely concerned over the senseless and needless death of other innocent railroad employees. Several cases highlight this concern.

On September 14, 1983, Seaboard System Railroad train Extra 1751 North moved onto the main track from the north end of the siding at Sullivan, Indiana, and proceeded north.[6] After Extra 1741 North had attained a speed of approximately 18 mph, another Seaboard train, Extra 8051 North, moving about 35 mph, overtook and struck the rear caboose of Extra 1751 North. The two crewmembers in the rear caboose were killed, and three crewmembers on Extra 8051 North were injured.

The Board calculates that the Extra 8051 North engineer's BAL at the time of the accident was 0.33 percent. The head brakeman for Extra 8051 North had a BAL of 0.11 percent. The Safety Board determined that the probable cause of this accident was failure of both head-end crewmembers of Extra 8051 North to remain alert due to the use of alcohol on duty, which resulted in their failure to observe the speed restrictions imposed by the governing wayside signals and to control the movement of the train accordingly.

Two catastrophic accidents occurred on the Burlington Northern Railroad in 1984 that further accentuated the Board's concern over railroad employees' safety.[7] On

[6] See National Transportation Safety Board Railroad Accident Report – "Rear End Collision of Seaboard System Railroad Freight Trains Extra 8051 North and Extra 1751 North, Sullivan, Indiana, September 14, 1983" (NTSB/RAR-84/02).

[7] See National Transportation Safety Board Railroad Accident Report – "Head-on Collision of Burlington Northern Railroad Freight Trains Extra 6714 West and Extra 7820 East, Wiggins, Colorado, April 13, 1984, and Read-End [sic] Collision of Burlington Northern Railroad Freight Trains Extra 7843 East and Extra ATSF 8112 East Near Newcastle, Wyoming, April 22, 1984" (NTSB/RAR-85/04).

April 13, 1984, Burlington Northern Railroad Company freight trains Extra 6714 West and Extra 7820 East collided head-on on the single main track at Wiggins, Colorado. Five train crewmembers were killed and two were injured. Total damage was estimated to be $3.9 million. On April 22, 1984, eastbound Burlington Northern freight train Extra 7843 East struck the rear of Burlington Northern freight train Extra ATSF 8112 East on the main track at Pedro passing siding area near Newcastle, Wyoming. Two train crewmembers were killed, and two were injured. Total estimated property damage was $1.4 million. The Safety Board found in the Wiggins accident that consumption of alcohol by the head-end crewmember of Extra 0714 West was a contributing factor and in the Newcastle case that the use of marijuana by the engineer of Extra 7843 East was a contributing factor.

Currently, there are no uniform State requirements for toxicological tests in the event of a railroad accident, and, but for the FRA rule being challenged in the captioned litigation, there would be no such Federal requirements. Several States do have statutory or regulatory requirements for toxicological tests in the event of an industrial and/or motor vehicle accident in which there is a fatality. Some States require such tests as a matter of policy established by their State medical examiner's office. In contrast, the Federal Aviation Administration (FAA), a sister organization of the FRA in the Department of Transportation, obtains toxicological results in approximately 85 percent of the aviation accidents involving fatalities. As a matter of fact, the FAA has its own toxicological laboratory and has developed a toxicological kit which includes instructions and shipping procedures. Further, as a matter of practice, the FAA requires toxicological tests of every occupant fatality of a general aviation airplane crash and a full autopsy on each person

seated at the aircraft's controls. This practice has allowed the FAA to develop a fairly complete picture of the alcohol/drug problem in the aviation industry.

In 14 CFR 91.11, the FAA specifically prohibits the use of alcohol and drugs as follows:

> (a) No person may act as a crewmember of a civil aircraft –
>
> (1) Within 8 hours after the consumption of any alcohol beverage;
>
> (2) While under the influence of alcohol;
>
> (3) While using any drug that affects his faculties in any way contrary to safety; or
>
> (4) While having .04 percent by weight or more alcohol in the blood.

On March 7, 1983, the Board issued safety recommendations to the FRA to promulgate regulations to effectively assist railroads to deal with the use of alcohol and drugs by all employees who are responsible for the operation and handling of trains. The Board's recommendations to the FRA read as follows:

> Immediately promulgate a specific regulation with appropriate penalties prohibiting the use of alcohol and drugs by employees for a specified period before reporting for duty and while on duty. (Safety Recommendation R-83-30)
>
> With the assistance of the Association of American Railroads and the Railway Labor Executives Association develop and promulgate effective procedures to ensure that timely toxicological tests are performed on all employees responsible for the operation of the train after a railroad accident which involves a fatality, a passenger train, release of hazardous materials, an injury, or substantial property damage. (Safety Recommendation R-83-31)

The FRA responded to Safety Recommendations R-83-30 and R-83-31 and on June 5, 1983, issued an Advance Notice of Proposed Rule Making (ANPRM) to address the alcohol and drug problem. The FRA held public hearings at several locations throughout the country. The Board testified at every hearing because of our commitment to public safety to achieve rules which we believe will terminate life-threatening situations caused by railroad employees who may be under the influence of alcohol and/or drugs. Finally, on August 2, 1985 (50 FR 31508), the FRA published the rule requiring toxicological testing of railroad operating crewmembers under certain circumstances.

In conclusion, the Safety Board believes that the knowledge by railroad operating crewmembers that they would be subject to tests in the event of an accident would be a powerful incentive to comply with the existing rules prohibiting alcohol and drug use. Equally as important, the results from such tests will, for the first time ever, provide a reliable data base on the magnitude of the role of alcohol and drugs in the causation of rail accidents. Without such tests, the actual cause of accidents is often extremely difficult to establish and the data base may be suspect. For example, without such tests, accidents which are in fact caused by alcohol or drug abuse may not be identified as such because of the lack of reliable, scientific data. Consequently, the determined cause of such accidents may be unavoidably erroneous and the opportunity for effective remedial measures lost forever.

Public safety should not depend on the fortuitous but haphazard testing that is now done only where the crewmembers are fatally injured. Public safety must rely on systematic testing that will provide meaningful data on the true extent of alcohol and drug abuse by railroad op-

erating crewmembers so that effective and timely action can be taken to halt the widespread use of alcohol and drugs in the railroad operating environment.

The Board has no objection to your making this letter public.

Respectfully yours,

ORIGINAL SIGNED BY
JIM BURNETT

Jim Burnett
Chairman

Enclosures (7)

BROTHERHOOD
OF LOCOMOTIVE ENGINEERS

GENERAL COMMITTEE OF ADJUSTMENT
ST. LOUIS SOUTHWESTERN RAILWAY LINES
D.E. THOMPSON, CHAIRMAN
1414 MAIN STREET - CENTER SUITE
SCOTT CITY, MO. 63780

P. M. WILKERSON, SEC'Y TREAS
420 KEELEY AVE.
SCOTT CITY, MO. 63780

March 21, 1986

ICC-243-2

John H. Riley, Administrator
Federal Railroad Administration
400 Seventh Street Southwest
Washington, D.C. 20590

Dear Mr. Riley:

I wish to file a formal protest against the St. Louis Southwestern Railway Company and its carrier officers who forced an engineer and fireman, represented by this Organization, to provide blood and urine samples and the manner in which the samples were obtained for toxicological testing under the Final Rule issued by the Federal Railroad Administration as taken from the August 2, 1985 Federal Register and in violation of Subpart C, Section 219.201 and Section 219.203 as found on pages 31571 and 31572.

I also wish to protest the ambiguous language as found in Section 219.201(c), parts 1, 2 and 3, and all of Sections 219.203 and 219.205 in the above mentioned Final Rule.

On March 11, 1986 Engineer D. R. Green and Fireman D. V. Case were called in pool freight service at Pine Bluff, Arkansas, to operate train HOASM, engine 7780, Pine Bluff to Jonesboro, Arkansas, on duty at 1:45 p.m.

Enroute to Jonesboro, Arkansas, at approximately 8:55 p.m., the train was struck by high winds or a tornado which resulted in 27 cars of the train being derailed. This fact is undisputed.

At approximately 1:25 a.m. Trainmaster-Agent T. E. Stokes from Memphis, Tennessee, and Assistant Division Superintendent Carl Bradley from Pine Bluff, Arkansas, were at the scene of the derailment and forced the entire crew to submit to the test using the Final Rule as their authority.

The tests were not completed until about 3:15 a.m. on March 12, 1986 and the crew was allowed something to eat around 3:25 a.m. Remember, this crew's last meal would have been around 12:30 p.m. on March 11, 1986. Where is the immediate taking of the test or concern for the crew with handling such as this?

The crew was taken to a small hospital at Brinkley, Arkansas, which was not equipped to take the samples as per the rule. The Carrier had knowledge of this and had contacted the company nurse at little Rock, Arkansas, to have her bring the kit to the hospital at Brinkley.

As the BLE General Chairman representing the engineers and firemen on this property, I had told Mr. Bradley that I was going to file a complaint the next time he forced a crew to take a test without probable cause. This is not the first such violation. I have not kept records and I cannot give an exact number of tests that have been performed on this property without probable cause.

The FRA has suggested that it may be necessary to test 150 to 200 incident [sic] in the industry. The Southern Pacific and Cotton Belt have already tested that many em-

ployees to date. I do not know the results of the Southern Pacific, but I can assure you the percentage of positive tests are considerably less than five percent on this property. Where is the good faith determination or probable cause with these percentages?

The abuse of the testing practices and constant harassment of the employees on this property constitutes flagrant violations of due process and must be challenged. When the FRA writes rules such as this, they leave this door wide open for the flagrant repeated violations, which create nothing but blatant harassment for our members.

If the FRA is going to force these rules on the employees, they must be charged with the responsibility of enforcing the rules. It would appear at this time that they either refuse this responsibility or lack the ability to do so.

When we have an incident caused by an act of God and have the crew handled in this manner, it clearly demonstrates the Carrier's continual harassment and now they have the FRA rules to hide behind.

There is no question as to the results of the tests that were performed in this incident. Regardless of the test results, we declare the samples invalid because of the procedure used in taking the samples, which were in violation of the procedures prescribed under the Final Rule.

We respectfully request a thorough investigation into the incident and the Final Rule to assure that similar incidents will not be repeated in the future.

Respectfully,

/s/ D. E. THOMPSON
D. E. Thompson

cc: J. F. Systma, Pres.—BLE
P. T. Kerrigan, VP & NLR
W. C. Rockey, Executive Asst.—FRA
Larry Mann, Atty., RLEA
D. M. Mohan, Executive VP—SP
R. D. Bredenberg, Gen. Man.—SP
L. G. Simpson, Gen. Man.—SP
Pat Schroeder, U.S. Rep.
Peter Rodino, U.S. Rep.
Bill Emerson, U.S. Rep.

Mr. R.T. Bates, President
Brotherhood of Railroad Signalmen March 22, 1986
Box U
Mount Prospect, Illinois 60056

Dear Sir and Brother:

In light of the recent implementation of the Federal Railroad Administration's rules on drug and alcohol use in the railroad industry I thought Grand Lodge would be interested in learning about how our local members are being affected by these new rules.

In Local 119 on the Burlington Northern Railroad there have been three members working in the Alliance Division, which is the area I represent as Local Chairman, subjected to Rule G testing recently. Two members were tested after the FRA rules became effective February 10 and the third was tested October 8, 1985. The following is a report on these three cases:

CASE 1: On February 13, at about 2:15 p.m., C.A. Shaw, CTC Maintainer at Edgemont, South Dakota, was involved in a minor vehicle accident in the parking area at the Burlington Northern office building in Edgemont. Mr. Shaw's accident report, which I will include with this letter, indicates that it was snowing at the time of the accident and that the company vehicle he was driving slid on some ice before striking a parked vehicle. The vehicle he struck was discovered to have been in a "No Parking" area.

Mr. Shaw went to his office and proceeded to fill out the required paperwork for the acci-

dent and attempted to contact his supervisor by company telephone to advise him of the accident. He was informed that a problem had been reported at a hot bearing detector on his territory and left the office to drive to that location. There he was successful in contacting his supervisor and was instructed to return to the office in Edgemont.

Following a brief review of the incident, Mr. Shaw was transported by BN officials to a hospital in Hot Springs, South Dakota, where he supplied them with urine and blood samples for the company's use in Rule G testing. He was then returned to Edgemont and at about 8 p.m. notified that he was being withheld from service tending results of the Rule G test.

Mr. Shaw was notified at his home at 3 p.m. February 14 by his supervisor that the test results were negative and that he was placed back in service. He was compensated for time spent traveling to the hospital and for time lost while he was withheld from service. There was no formal investigation held in this case. There was no evidence of any action on Mr. Shaw's part which would led BN officials to invoke the reasonable cause provision of the Rule G guidelines which refer to alcohol or drugs being a contributing factor in an accident. Mr. Shaw has been employed in the Signal Department with BN since May 1976 and has an exemplary personal record during that time.

CASE 2: On February 12, between 8 p.m. and midnight, L.D. Schluterbusch, CTC Maintainer at Northport, Nebraska, allegedly violated two

company rules concerning use of a dual control switch and unauthorized occupancy of tracks while working on a trouble call.

Mr. Schluterbusch was notified by a BN dispatcher at about 8 p.m. that there was an improper track indication on a section of his territory. Mr. Schluterbusch informed the dispatcher that a broken rail was the probable cause of the problem and proceeded to arrange for use of a Hy-rail vehicle since the area involved is not accessible with the vehicle supplied for him by the railroad.

Mr. Schluterbusch borrowed a vehicle from the local track forces and obtained a track permit from the dispatcher to place the vehicle on the tracks. After waiting for a train to complete a switching move, he set the vehicle on the tracks on a crossing just outside the limits of his track permit. He was then told by the dispatcher to give back his permit, set off, and wait while three trains were operated through the section where the track indication had been reported. Mr. Schluterbusch took the vehicle off the tracks after using a switch outside his track permit limits to return to the road crossing.

After waiting until close to midnight for the last train movement Mr. Schluterbusch was contacted by his supervisor and told to return home. He informed his supervisor that he would have been unable to continue working, anyway, because of the Hours of Service requirements.

He returned home and received a telephone call from his supervisor at about 3 a.m. Arrangements were made for them to meet at Mr. Schluterbusch's home and following that meeting Mr. Schluterbusch was transported to the hospital in Bridgeport, Nebraska, where he provided a urine sample for Rule G testing. He was instructed to await his supervisor's instructions before returning to duty and was returned to his home at about 4:30 a.m.

Mr. Schluterbusch was notified at 4 p.m. February 14, that the test results were negative and that he was returned to duty. He was compensated for time spent to obtain the test sample and for time withheld from service.

An investigation of the alleged rules violations was scheduled for February 21 and Mr. Schluterbusch agreed to waive that investigation and was suspended from service for five days. I am including a copy of the investigation notice and record with this letter. Incidentally, the cause of the track indication was found to be a broken rail.

CASE 3: On October 8, 1985, at about 11:40 a.m., D.C. Young, CTC Maintainer at Torrington, Wyoming, was involved in a traffic accident while driving a company vehicle in Torrington. Mr. Young's accident report, included with this letter, indicates that he was approaching a stop sign when his vehicle was struck by a vehicle turning out of a parking spot.

The accident was determined to be the fault of the other driver, who was issued a traffic citation. Mr. Young was instructed by a supervisor to return to his office following the accident and await further instructions. He waited there until about 3 p.m., when he was taken to the local hospital to supply a urine sample for Rule G testing.

Mr. Young was not removed from service. The test results were negative and no investigation was scheduled.

In each of these cases there was no evidence that our members acted in a manner which would have led Burlington Northern officials to reasonably suspect that use of alcohol or drugs was a contributing factor in the incident.

Such evidence apparently will not be given consideration when BN officials are deciding whether to subject our members to Rule G testing. The only criteria seems to be whether there was an accident, no matter how minor, or any other incident involving any employee.

This management technique seems to me to be the equivalent of an FRA-sanctioned fishing expedition. BN management seems to feel that they have a better chance of having an impressive Rule G enforcement record if they take advantage of the new FRA rules to test employees for every minor incident. I suppose it amounts to working with the odds from Burlington Northern's standpoint, but from the employees' standpoint it amounts to harassment and unfair treatment.

These Rule G tests also can result in a measure of embarrassment for the employees subjected to the tests. In each of the three cases reported here our members reside in small communities and news of such testing is far from privileged information in a small town.

Mr. Young informed me that the local newspaper's report on his accident included the information on his being subjected to the BN Rule G test. Mr. Schluterbusch told me, concerning his trip to the Bridgeport hospital for his Rule G test, "Everybody in town knew it the next day." I doubt, however, that news of the negative results of such tests receives such enthusiastic reaction.

I hope this letter and the accompany documents serve to provide Grand Lodge with some worthwhile information concerning the treatment of our member under the new Rule G.

Fraternally,

/s/ JAMES P. FINN
James P. Finn
Local Chairman, Local 119
Brotherhood of Railroad
Signalmen
220 N. 6th St.
Douglas, Wyoming 82633

cc: V. Van Artsdalen, Vice President
W.A. Class, Jr., General Chairman
R.J. Bolinger, Local President
C.A. Shaw
D.C. Young
L.D. Schluterbusch

EMPLOYEE MUST REPORT ALL ACCIDENTS

Date of Accident Feb 13- 19 86 AM 2:15 PM Visibility Prev

Exact Location of Accident parking lot of Edgemont depot (northwest corner)

Weather (check one) ☐ Clear ☐ Raining ☐ Cloudy ☒ Snowing ☐ Sleeting ☐

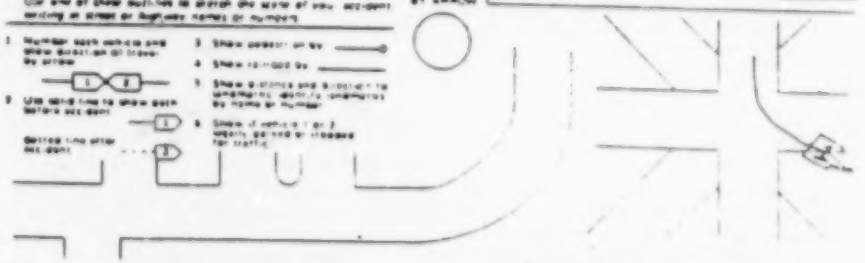
Company Vehicle (No. 1)
Driver C A Shaw Home Address Edgemont SD Phone Res Bus
Occupation Signal Mtr Age 34 Dept Signal Stationed Edgemont
Driver's Lic No 552379-01351 Chauffeur's Lic No State SD Expires Date
Unit No 1178 Veh Make Model 1984 Ford Lic No 17392 State Nb
Speed 3mph Direction East Lane right Seatbelts in Use? yes Head lights-Taillights on

Other Vehicle (No. 2)
Driver Driver's License No State
Address Phone Res Bus Occupation
Name & Address of Veh Owner Arnie Eissler - Mule Creek Sat, Wyo
Veh Make/Model 1984 GMC Chevy PU Lic No Wyo State
Speed Direction Lane Seatbelts in Use? Head lights-Taillights on
Insurance Company Policy Number

INDICATE ON THIS DIAGRAM WHAT HAPPENED

INDICATE NORTH BY ARROW

At what distance was danger first noticed?



Company Driver's Description of Accident (Refer to Vehicles by Number) Vehicle # 1 was on parking lot - touched brakes to slow vehicle # 1 to continue on into parking lot and slid on ice striking vehicle # 2

PRESIDENT

MAR 18 1986 RTB

DRIVE SAFELY

B OF R S.

Highway	No. of Lanes ________	[illegible] ________	Cement Asphalt etc. ________	
	Dry ________	Wet ________	[illegible] ________	Smooth ________ Rough ________
Traffic Signals or Signs	For Company Vehicle		For Other Vehicle	
Signals Given	By Company Vehicle		By Other Vehicle	

Did Police Make Report of this Accident

☐ Yes ☑ No (If yes, indicate which) ☐ City Police ☐ State Police ☐ Other (Specify)

Officer's Name ________ Address ________

Describe damage to Company Vehicle ________ dent front bumper

Estimate of damage $ 150 ⁰⁰

Describe damage to Other Vehicle ________ dent in tail gate

Estimate of damage $ 300 ⁰⁰

Describe any damage to Other Property ________

Name and address of owner of other property ________

Estimate of damage $ ________

[illegible]

	NAME	ADDRESS	AGE	SEX	DESCRIBE [illegible]
Driver Vehicle 1					
Driver Vehicle 2					
Passengers Vehicle 1					
Passengers Vehicle 2					
Others					

IMPORTANT [illegible] NAMES AND ADDRESSES OF WITNESSES [illegible] IMPORTANT

Secure names and addresses of disinterested witnesses, bystanders, or persons [illegible] who may have seen the accident or heard any statement made by persons injured

NAME — WITNESSES	ADDRESS	[illegible]

SIGNATURE ________ [illegible signature] [illegible]

Edgemont, So. Dakota
(Location)

Feb. 13, 1986
(Date)

Carl A. Shaw (Name)

Signal Maintainer (Position)

Edgemont, So. Dakota (Location)

This is to advise you that you are being withheld from service pending results of the investigation of your alleged violation of Rule G (Rule) on or about 2:15 p.m. Feb. 13, 1986 (Time and Date) at Edgemont, So. Dakota (Location) following probable cause testing procedures.

Please acknowledge receipt by affixing your signature to the space provided on copy of this letter.

Bruce R. Swain (Name) Bruce R. Swain 7⁵⁵ pm

Trainmaster (Title)

ACKNOWLEDGEMENT:

C A Shaw
Signature

2-13-86
Date

Gerald R. Southout [illegible]
Witness

Feb. 13, 1986
Date

[illegible]EPORT OF VEHICLE ACCIDENT

[illegible]

Date of Accident: 10 - 8 - 85 . 1140 . Visibility: clear

Exact Location of Accident: Intersection of W 20th & WB in Torrington Wyo

Weather (check one): [illegible]

Company Vehicle (No. 1)

Driver: DC Young — Box 56 — Phone Res. 532-2473 / Bus. 532-5639

Occupation: CTC Mntr — 29 — Signals — Torrington

Driver's Lic. No.: 19-5235026 — State: Wyo — Expiration Date: 6-2-89

Unit No.: 3551 — Ford F250 — Temp 0914220 — State: Wyo

Speed: 5 — Direction: West — Yes — Headlights – Taillights on?: no

Other Vehicle (No. 2)

Driver: Shelly Willoughby — 1914293055 — State: Wyo

Address: PO Box 28 LaGrange Wyo — 834-2475 — Occupation: X — Age: 20

Name & Address of Owner: Same

Veh. Make: 1981 Buick — 79783 — State: Wyo

Speed: 5 — Direction: W — North — Headlights – Taillights on?

Insurance Company: State Farm — 74 4161-A06-50

Indicate on this diagram what occurred [illegible] — 0

Company Driver [illegible]:

#1 was slowing for stop sign when #2 turned out of parking space & hit #1 in passenger side

DRIVE SAFELY

VEHICLE NOTIFICATION

To: C J McCORMICK DENVER

J H ARRINGTON ALLIANCE — K D H[illegible] CHEYENNE — Date: 10-8-85 — From: TORRINGTON WYO

Division: ALLIANCE — Subdivision: 8 — MP Location: 52 — Line Segment: 5

Nearest Station: TORRINGTON — State: WYO — Time of Incident: 1140AM — Date of Incident: 10-8-85

Indicate type(s) of incident by placing "X" in all appropriate boxes

☐ CASUALTY TO EMPLOYEE ☐ NOT ARISING FROM AN ON-TRACK RAIL EQUIP INCIDENT ☐ ARISING FROM AN ON-TRACK RAIL EQUIP INCIDENT

☐ CASUALTY TO A NON EMPLOYEE (NOT INVOLVED IN AN ON-TRACK RAIL EQUIPMENT ACCIDENT/INCIDENT) ☐ PASSENGER ☐ NON TRESPASSER ☐ TRESPASSER ☐ CONTRACT EMPLOYEE ☐ OTHER

CASUALTIES

Name of Injured — Social Security No. — Age — Yrs. Service — ☐ Male ☐ Female

Occupation — Department — Resp. Center — ☐ Employee on duty ☐ Off duty on prop. ☐ Off duty off prop.

Home Address — City — State

Part of Body Affected — Nature of the Injury

Name of Physician & Hospital — Address

Type of Medical Attention ☐ First Aid Only ☐ Stitches ☐ Prescription ☐ Other — Est. Act. Lost Workdays — Est. Restricted Activity Days

PROPERTY

☐ FIRE INCIDENT ☐ RR PROPERTY DAMAGE ☐ NON-RR PROPERTY DAMAGE

☒ COMPANY VEHICLE INCIDENT – (ALL INCIDENTS INVOLVING COMPANY OWNED OR LEASED VEHICLES OR PRIVATELY OWNED VEHICLES BEING USED FOR COMPANY BUSINESS WHEN NOT OPERATED AS ON-TRACK EQUIPMENT CONSISTS)

Name of Driver: D C YOUNG — Social Security No.: [illegible] — Dept. Assigned: SIGNAL — Speed: 5 MPH

Co. Vehicle No.: 3551 — Est. Damage: [illegible] — Other Vehicle Involved: Year / Make — Speed MPH — Name of Driver — Est. Damage

☐ OTHER PROPERTY DAMAGE OR LOSS (NOT ARISING FROM AN ON-TRACK RAIL EQUIPMENT ACCIDENT/INCIDENT) ☐ THEFT ☐ VANDALISM ☐ OTHER (PROVIDE DETAILS IN DESCRIPTION)

DESCRIPTION

Brief Description of Incident: [illegible]

In casualty cases specifically identify the following: Specific physical act injured person performing — Specific location of injured at the time of incident — Any unusual event or occurrence — Resulting occurrence

WITNESSES

Name — Address — City & State

Notified: ☐ FRA ☐ NTSB ☐ State Commission — Signature: D C YOUNG — Title: [illegible]

TEAR OFF THIS PAGE AND TRANSMIT BY QUICKEST AVAILABLE MEANS OF COMMUNICATION TO SUPERINTENDENT [illegible]

[illegible] to C J McCormick [illegible]

TO: D.R. Hestermann, A.S.R.M. February 18, 1986

This will acknowledge receipt of your letter dated February 13, 1986 giving notice to attend investigation in the Roadmaster's Office at Bridgeport, Nebraska at 9:00 am, Friday, February 21, 1986 for the purpose of ascertaining the facts and determining responsibility in connection with L.D. Schluterbusch's failure to obtain authority to occupy main track between Power Switch Northport and Power switch East Bridgeport and your failure to obtain authority to use dual control switch machine located at UP transfer Northport at or about 9:45 pm on Wednesday, February 12, 1986 while assigned as Signal Maintainer at Northport East.

This is to advise that I L.D. Schluterbusch, failed to obtain authority to occupy maintrack between Power Switch Northport and Power switch East Bridgeport and to use dual control switch machine located at UP transfer Northport, which is in violation of Rules 46 and 275 of the *Rules of the Maintenance of Way Department* (form 15125).

In connection with this occurrence, I admit I violated Rules 46 and 275 of the *Rules of the Maintenance of Way Department*. Since I admit this offense, I am waiving my right to investigation as per rule 54 of the Agreement between Burlington Northern Inc., and it's [sic] Employees represented by the Brotherhood of Railroad Signalmen with the understanding that discipline will be an entry of censure on my personal record and suspension from the service of the Burlington Northern Railroad Company for a period of 5 (five) days from February 19, 1986 through and including February 23, 1986. Will report for duty February 24, 1986.

LESLIE D. SCHLUTERBUSCH — 2-18-86
Signature, Employee — Date

J. P. FRINN — 2-18-86
Signature, Union Representative — Date

cc: D.D. Phillips
C.J. McCormick

EXHIBIT 1

BURLINGTON NORTHERN
RAILROAD CO.

SEATTLE REGION

SPOKANE, PACIFIC AND PORTLAND DIVISIONS

TIMETABLE NO. 7

IN EFFECT AT 12:01 A.M.
Pacific Standard Time
Mountain Standard Time

Sunday, April 27, 1986
Including National Railroad Passenger Corporation
(NRPC) Trains

Vice President
W. W. FRANCIS

General Manager
L. D. REED

Vice President
Transportation – System
J. R. GALASSI

SPOKANE DIVISION
J. W. ISENBERG –
Division Superintendent, Spokane

D. L. MAZE – Asst. Supt. Transportation – Spokane
C. E. BROOKS – Asst. Supt. Administration – Spokane
?. F. KNUTSON – Asst. Supt. Roadway Maintenance – Spokane
?. J. MOLITOR – General Road Foreman – Spokane
?. S. MALING – Trainmaster – Spokane
D. R. WILKERSON – Trainmaster – Spokane
F. C. BROSE – Trainmaster-Road Foreman – Wehatchee
D. G. VERITY – Agent-Asst. Trainmaster – Wehatchee
Agent-Asst. Trainmaster – Kettle Falls
?. D. ALLEN – Trainmaster-Road Foreman – Whitelish
?. J. KURZ – Trainmaster – Whitelish
J. B. SCHARFF – Terminal Superintendent – Spokane
G. L. PORTSCHE – Asst. Terminal Superintendent – Spokane
J. A. REGAN – Trainmaster-Road Foreman – Spokane
?. D. McLAUGHLIN – Terminal Trainmaster – Spokane
?. ORTIZ – Terminal Trainmaster – Spokane
?. A. CARLSON – Terminal Trainmaster – Spokane
D. E. KULT – Asst. Terminal Trainmaster – Spokane

PACIFIC DIVISION
J. K. VADEN – Division Superintendent, Seattle

R. R. STIMART – Asst. Supt. Transportation – Seattle
H. A. HANSON – Asst. Supt. Administration – Seattle
?. A. PARKER – Asst. Supt. Roadway Maintenance – Seattle
?. L. NESWICK – General Road Foreman – Seattle
?. A. GORDON – Trainmaster – Road Foreman – Seattle
L. G. HALL – Trainmaster – Longview
B. L. JOHNSON – Agent-Asst. Trainmaster – Longview
M. W. MELINE – Agent-Asst. Trainmaster – Centrawa

D. G. BOESPFLUG – Agent-Asst. Trainmaster – Everett
?. D. CLIFTON – Trainmaster – Bellingham
?. B. MORRISON – Agent-Asst. Trainmaster – Bellingham
?. C. McNEIL – Trainmaster-Road Foreman – Wenatchee
D. J. KAYNE – Asst. Supt. – New Westminster
A. J. SCHUURMANS – Agent-Asst. Trainmaster – New Westminster
?. W. DUFFY – Terminal Superintendent – Seattle
?. K. LEE – Asst. Terminal Supt. – Seattle
?. K. SIMONIS – Asst. Terminal Supt. – Tacoma
?. B. WICK – Terminal Trainmaster – Seattle
J. K. WOVCHA – Terminal Trainmaster – Seattle
J. S. LUNAK – Terminal Trainmaster – Seattle
J. S. MEYER – Terminal Trainmaster – Seattle
?. J. RUTT – Terminal Trainmaster – Seattle
?. A. FRY – Terminal Trainmaster – Seattle
?. W. KING – Trainmaster – Tacoma
R. L. FUDGE – Asst. Trainmaster – Tacoma

PORTLAND DIVISION

R. J. SEELEY – Division Superintendent, Portland
K. D. TOWNSEND – Asst. Supt. Transportation – Portland
W. E. THOMPSON – Asst. Supt. Administration – Portland
S. G. MELONAS – Asst. Supt. Roadway Maintenance – Portland
?. ?. ALBINGER – General Road Foreman – Portland
?. H. MITCHELL – Trainmaster-Road Foreman – Vancouver
?. ?. RYAN – Trainmaster-Agent – Klamath Falls
G. E. WEEKLEY – Trainmaster – Wishram
J. D. WRIGHT – Trainmaster-Road Foreman – Bend

D. L. MEYERS – Trainmaster-Road Foreman – Portland
I. B. CLOTT – Agent-Asst. Trainmaster – Albany
I. G. ANDERSON – Terminal Superintendent – Vancouver
D. J. MAHLE – Asst. Terminal Supt. – Vancouver
D. L. MEAD – Terminal Trainmaster – Vancouver
G. W. BOWMAN – Terminal Trainmaster – Vancouver
I. E. STEPHENS – Terminal Trainmaster – Vancouver
I. P. OLSON – Terminal Trainmaster – Vancouver
I. C. ALBRIGHT – Asst. Terminal Trainmaster – Vancouver
D. H. SHAFER – Terminal Superintendent – Pasco
J. A. McKAY – Asst. Terminal Supt. – Pasco
Terminal Trainmaster – Pasco
I. R. KOELLNER – Terminal Trainmaster – Pasco
I. J. BOEN – Terminal Trainmaster – Pasco
I. J. ROYAL – Terminal Trainmaster – Pasco
S. M. STOA – Asst. Terminal Trainmaster – Pasco
D. L. LAMBERSON – Trainmaster – Pasco
G. L. SOLEM – Trainmaster-Road Foreman – Pasco
?. N. ROWLEY – Trainmaster – Pasco
?. N. VOORHEES – Agent-Asst. Trainmaster – Yakima

TRANSPORTATION DEPARTMENT

A. BUTLER – Superintendent Transportation, Seattle
I. L. JOHNSON – Manager Train Operations – Seattle
G. L. SKILLMAN – Regional Chief Dispatcher – Seattle
J. W. MILLER – Chief Dispatcher – Seattle
L. A. SHORT – Chief Dispatcher – Seattle
F. G. PORTSMOUTH – Chief Dispatcher – Seattle
?. E. SHULTZ – Regional Chief Dispatcher – Billings

SPECIAL INSTRUCTIONS

Rule G – change to read:

Employes [sic] must not report for duty; perform service, or enter Company property with a blood alcohol content greater than 0.00 percent and are prohibited from the use, possession or sale of alcoholic beverages while on duty or on Company property.

Employes [sic] must not report for duty, perform service, or enter Company property under the influence of illegal controlled substances and are prohibited from their use, possession or sale while on duty or on Company property. For purposes of this rule, any employe [sic] testing positive for a controlled substance (or its metabolite) in their urine is presumed to be under the influence of such drugs.

Employes [sic] must not report for duty or perform service under the influence or impaired by prescription drugs, medications or other substances that may in any way adversely affect their alertness, coordination, reaction, response or safety.

Employes [sic] operating Company vehicles at any time are subject to this rule.

Rule Q – Add the following:

MT – Main Track(s)

Rules 2 and 3 –

Employes [sic] governed by the General Code of Operating Rules are "designated employes" under Rules 2 and 3.

Rule 2 –

A reliable watch that indicates hours, minutes and seconds will comply with the requirement of Rule 2. Hours and minutes must be indicated in arabic numerals.

Watches must be cleaned and oiled in accordance with manufacturer's instructions. Battery powered watches must have energy cell (battery) replaced at minimum intervals recommended by manufacturer, or sooner if necessary for accuracy.

Rule 3 –

Time signals received from WWV Time may be used to set watches and clocks to correct time. The hours are given in Coordinated Universal Time; therefore, only the minutes and seconds may be used. Telephone number for WWV time is 8-998-8463 (8-WWV Time).

Rule 6(A) – explantion of characters:

A	– Automatic Interlocking (actuated automatically by the approach of a train).
B	– General orders, notices, and circulars.
I	– Manual Interlocking (operated by a control operator).
J	– Junction.
K	– Standard clock.
M	– Railroad crossing protected by signals or gates.
R	– Train register.
T	– Turntable or wye.
U	– Railroad crossing not protected by signals or gates.
X	– Crossover.
X(2)	– Multiple crossovers.
Y	– Yard Limits.

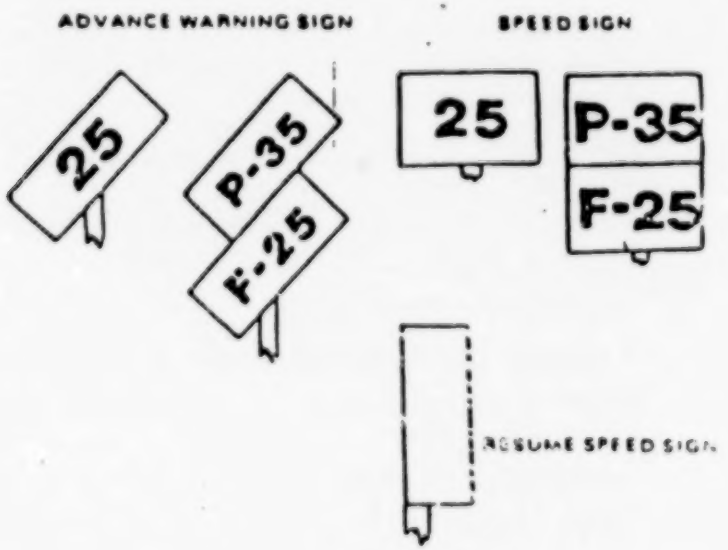
Rule 10(E) – add the following paragraphs:

Reduce speed limits are designated by Advance Warning Sign (diagonally upward), Reduce Speed Sign (square) and Resume Speed Sign (vertical).

The "Advance Warning Sign" will be placed two miles in advance of the location where the lower speed takes effect. At the point where the reduced speed applies, a speed sign will repeat the permissible speed. The lower speed will be in effect until a "Resume Speed Sign" or another "Speed Sign" is displayed.

At the end of a reduced speed zone, a train or engine will be governed by a "Speed Sign" displaying a higher speed or a "Resume Speed Sign" which will authorize the maximum permissible speed on that subdivision. In either case, the speed must not be increased until the entire train has passed the sign displayed.

Locations where reduced speeds are required, but which are not indicated by signs, are listed in the special instructions for each subdivision.



These signs, as illustrated, apply to train and engine movements as follows:

Figures preceded by letter P apply to passenger trains.
Figures preceded by letter F apply to freight trains.
Figures not preceded by a letter apply to all train movements.

Rule 81 –

Within yard limits, switch crew may ascertain from the yardmaster instead of the train dispatcher that there are no train orders or track bulletins that they must obtain. This will fulfill the requirement of Rule 81.

Rule 82(A) – add as last paragraph:

At intermediate locations in CTC territory, Rule 82(A) will not apply when so authorized by train dispatcher.

Rule 93 – add the following two paragraphs:

Conditional yard limits may be established for the hours and/or days specified in general order or special instructions and the limits will be identified by signs reading "CONDITIONAL YARD LIMITS".

General order or special instructions will read, as example:

Conditional yard limits in effect between MP ____ and MP ____ between (station) and (station) (time) until (time) daily Monday through Friday. If in effect 24 hours per day, time need not be specified.

Rule 103(E) – change to read:

Maximum authorized speed is 25 MPH instead of 40 MPH.

Rule 104(M) – change first paragraph to read:

Instructions for operation of spring switches are posted at or near the spring switch and must be complied with. Spring switchs are identified by yellow sign with black letter "S" located on or near spring switch. Facing point movements over spring switches will be protected by signals or indicators where required.

Rule 104(M) – change fifth paragraph first sentence to read:

All spring switches are equipped with facing point locks except when identified as not having a facing point lock in the Individual Subdivision Special Instructions.

Rule 153 – add the following paragraph:

When using main tracks, except double track, in westward or southward timetable direction, they will be numbered consecutively from right to left beginning with Main 1. When using in eastward or northward timetable direction, they will be numbered from left to right beginning with Main 1.

Rule 223, Rule 225 and Form N Train Order – Will not be used.

U.S. Department
of Transportation

**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 21 1986

Mr. D. E. Thompson
Chairman
General Committee of Adjustment
St. Louis Southwestern Railway Lines
Brotherhood of Locomotive Engineers
1414 Main Street, Center Suite
Scott City, Missouri 63780

Dear Mr. Thompson:

I appreciate your recent letter regarding post-accident toxicological tests conducted after a derailment of a St. Louis Southwestern Railway (Cotton Belt) train near Penrose, Arkansas, on March 11, 1986. You have expressed concern that this event may not have qualified for post-accident testing under the FRA Alcohol and Drug rule, and have raised other issues related to the FRA rule and the Cotton Belt program.

In response to your telephone call to our Office of Chief Counsel, FRA initiated an investigation of this matter just prior to the receipt of samples at the Civil Aeromedical Institute. We provided a telephonic report to you shortly thereafter. Based on information available at that time, it appeared that there may have been an irregularity in the conduct of the tests. Since that time we have developed additional facts, which, although corroborative in many respects of the information that you provided, describe a different situation from that perceived immediately after the event.

Based on all the information now available, it appears that with one exception the Cotton Belt discharged its obligations under the requirements for mandatory post-accident testing contained in Subpart D, Title 49, Code of Federal Regulations (copy enclosed). The railroad is required to obtain samples for toxicological testing from all crew members after any train accident that is determined to involve at least $500,000 in railroad property damage. As soon as possible after the accident, the railroad is required to make reasonable inquiry into the facts of the accident and to make a good faith judgment as to whether testing is required. It appears that the Cotton Belt did so.

As you suggested when our Office of Chief Counsel contacted you on March 12, 1986, the railroad did have qualified officers on the scene of the derailment after it occurred. An Assistant Superintendent and Assistant Division Engineer surveyed the damage and reported specific information on railroad property losses to the Superintendent by telephone. In joint consultation, they estimated that damages would exceed $500,000. Under those circumstances, the railroad was required to take the employees to an independent medical facility for collection of blood and urine samples, which it did.

On the morning after the accident, and subsequent to the taking of samples, damage was estimated at slightly under $500,000. Over a period of days after the accident, the railroad's officers made a more detailed examination of railroad property damage and perfected an aggregate estimate that slightly exceeds $500,000. But even if the final damage calculation had fallen under $500,000, the railroad was correct in testing, since it is the initial good faith judgment that controls. *See* section 219.201(c).

From all that appears at present, the accident was, as you maintain, caused by a tornado or high winds striking the train. I can certainly understand your concern over

testing crew members after a derailment caused by an act of God. However, the process of regulating requires that lines be drawn that will address legitimate public and private interests in the substantial majority of situations to which they apply. In this case, we had an event that falls far outside those reasonably forseeable events of ordinary railroad operations. Indeed, we cannot recall any previous accident involving such severe damage caused by an event of this kind.

However, I hope you will keep two points in mind. First, it is nearly always difficult to determine accurately and quickly what caused, or contributed to the severity of, a major train accident. This is especially true where, as here, property damage is substantial; clues as to cause are often hidden in the wreckage. (In this case, it was not immediately clear even to the crew of the train that the derailment had been caused by a tornado.) Only later, after thorough investigation of all of the facts, can final conclusions be reached. Yet, if toxicological samples are to be of any value, they must be obtained as soon as possible after the event. Accordingly, the categorical approach necessary to ensure uniform testing after accidents involving major public interest will, on very rare occasions, produce anomalous cases.

Creating exceptions to post-accident testing for acts of God or other extraordinary occurrences would, I believe, lead to less reliable data on alcohol and drug involvement than our current rule is likely to produce. For example, creating a "tornado" exception might invite allegations of tornado damage where none exists. The tornado might be "invented" in order to evade toxicological testing and/or tort liability; the fact that many tornado sightings go unconfirmed demonstrates that even such a fabrication could not be readily revealed. Even in the case of a derailment of a portion of a train caused by a tornado, proper obser-

vation of weather conditions and coordination of train and locomotive brakes may in some cases prevent a larger and more costly derailment. Absence of toxicological testing may leave unanswered one key question about the fitness of the crewmembers. Similarly, in the case of a track washout caused by a sudden flood, there may often be an opportunity for the crew substantially to mitigate the effects of the natural occurrence that gives rise to the hazard. But a blanket exception for such events would deny the public any information on what may have caused the crew to fail to take such mitigating action. Although it was expected that a very few "acts of God" would play a role in events requiring post-accident testing, commenters in the rulemaking did not seriously argue that a blanket exclusion was practical.

Second, keep in mind that every time we make an exception, we introduce an additional element of judgment, together with the potential exercise of discretion by the railroad officer in the field. It is important that we limit the degree of that discretion as much as we can. Particularly where post-accident testing of blood is concerned, FRA should make sure that the railroads do what the rule requires—no less and no more.

We do not agree with your characterization of sections 219.201, 219.203, and 219.205 as ambiguous. These provisions were prepared after a painstaking rulemaking process. They provide firm guidance to the railroads with respect to the conditions under which tests are to be required. We may well need to address specific problem areas as the rules are implemented and to that end we encourage everyone in the industry to identify any particular provisions that require clarification or modification, offering alternative language that is consistent with the public's interest in determining cause.

There is one significant respect in which the railroad's handling of this incident was deficient. As noted by the crew members involved, the railroad nurse who brought the shipping kit to the hospital apparently became excessively involved in the sample labeling and packaging process. Under the rule, these functions are to be performed by personnel of the independent medical facility. Although it appears that this involvement was intended to facilitate the sample collection process, it was clearly inappropriate. We have brought this matter to the attention of the railroad in order that in the future railroad-employed personnel will not be involved in the process of sample collection.

FRA cannot comment on other testing of your members by the railroad, which you allege to be extensive. It is likely that the FRA requirements for post-accident toxicological testing will require testing after no more than 200 events in any year across the nation. (The pace at which post-accident testing was performed during the first month that the rule was in effect fully supports this prediction.) Wholly apart from the post-accident testing program (Subpart C of the rule) and reasonable cause testing authority (Subpart D of the rule), the Cotton Belt has evidently elected to proceed with urine testing based upon its own authority as an employer. FRA has not authorized this testing and is not responsible for the conditions under which individual tests are performed. If there is a dispute concerning the right of the railroad to conduct these tests, it is a matter for resolution under appropriate provisions of the Railway Labor Act.

Finally, you suggest that the testing that occurred after the Penrose accident was legally deficient because it was not based on "probable cause." That challenge, however, goes directly to the central issue of the pending lawsuit

concerning FRA's rule. Because a qualifying event that triggered mandatory testing had occurred, the railroad had a duty under FRA's rule, which remains in effect, to ensure that the testing was done. Whether such testing is reasonable under the Fourth Amendment will be answered authoritatively by the present court action.

I understand your concerns, and hope that I have addressed them. Thank you for your interest in this matter.

Sincerely,

/s/ JOSEPH W. WALSH

Joseph W. Walsh
Associate Administrator
for Safety

U.S. Department
of Transportation

**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 22 1986

Mr. R. T. Bates
President
Brotherhood of Railroad Signalmen
Box U
Mount Prospect, Illinois 60056

Dear Mr. Bates:

I appreciate your recent letter regarding alleged abuse of the testing provisions of FRA's Alcohol and Drug Regulations by the Burlington Northern Railroad ("BN"). You enclosed a March 22, 1986, letter from James P. Finn, the Brotherhood of Railroad Signalmen local chairman from Douglas, Wyoming, which described three incidents that you believe amount to harassment of employees through BN's application of FRA's rule.

As FRA Administrator John Riley indicated in a previous conversation to which you refer, FRA does not intend to permit its alcohol and drug rule to be used to harass employees. However, FRA's rule had no bearing on the incidents described in Mr. Finn's letter. Each of the testing incidents he describes was performed under BN's own testing program, which was established approximately two years before the FRA rule became effective.

A number of factors indicate that FRA's rule was not relied on and is therefore not at issue. Mr. Finn's factual recitation contains no allegation of any expression or indication by the BN officials that they were relying on testing authority conveyed by FRA's rule. This is not surprising, as BN has apparently decided not to avail itself of

the testing authority granted by Subpart D of FRA's rule; instead, it is continuing to employ its pre-existing authority. Indeed, BN officials have told my staff directly that the testing in question was performed solely on the basis of the railroad's own authority. These representations are consistent with BN's "Supervisor's Handbook of FRA Regulations, BN Policy and Procedures Concerning the Control of Drug and Alcohol Use in Railroad Operations" (dated March 1, 1986), which provides in relevant part (p 60):

> Burlington Northern will continue its own program of reasonable cause testing which resembles but is not, at this time, being done under the auspices of the FRA rules. Urinalysis testing will be done when a supervisor has reasonable cause to believe that alcohol or drugs may have been a contributing factor in a human factor accident, or if a Burlington Northern supervisor detects any employee displaying abnormal behavior.

Even assuming *arguendo* that BN purported to rely on the authority granted by Subpart D of our rule, it is clear that none of the three incidents would in fact have qualified under the conditions established by Subpart D. One incident occurred on October 8, 1985, over four months prior to the effective date of FRA's rule, and obviously could not have been authorized thereby.

The February 13, 1986, incident allegedly arose from a minor non-train incident involving a company vehicle and fails to qualify under Subpart D in several respects. First, there is no reason to believe that the employee driving the vehicle was engaged in covered service, *e.g.*, driving to repair a signal mechanism. Nor is there any hint that the railroad was relying on either a supervisor's reasonable suspicion or a rule violation as set forth in Title 49 C.F.R. § 219.301(c)(1) and (c)(2). The only criterion remaining

is that permitting breath or urine* testing of employees reasonably suspected of contributing to the occurrence or severity of a reportable accident or incident. Title 49 C.F.R. § 219.301(b)(2) and (c)(1). But this was not a train accident. Nor was there any injury, much less one that would have made this non-train incident reportable. Absent any circumstances here that would have permitted testing under the authority granted by FRA's rule, the railroad necessarily is relegated to its own authority.

The same is true of the incident occurring on February 12, 1986. Again, no event had occurred that would have authorized testing under FRA's rule. There is first of all no basis for concluding either that two supervisors purported to have a reasonable suspicion of impairment or that the employee tested had been involved in a reportable accident or incident. That leaves only § 219.301(b)(3), which authorizes testing of an employee who has been directly involved in "[n]oncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to the movement of a train. . . ." However, the direction admittedly violated by the tested employee did not go to the movement of a train, but rather concerned the movement of a "hy-rail" vehicle, which is a truck-like vehicle that is also mobile on rails. The employee's actions here, however questionable, were not among the limited safety violations that can trigger authorized testing under the provision in question.

Thus, the incidents related in Mr. Finn's letter were not, and could not have been, related to FRA's rule. I therefore

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* Mr. Finn alleges that urine and blood samples were taken. Except for post-accident testing, which is clearly not involved here, FRA's rule permits blood testing only at the request of an employee who has given breath or urine samples based on FRA's reasonable cause provisions.

reject any conclusion that they stand as examples of "an FRA-sanctioned fishing expedition." Whether and to what extent the incidents constituted harassment by BN management of the tested employees are issues that do not involve FRA or our rule, but instead must be resolved under the grievance procedures of the Railway Labor Act.

This response to your letter serves to highlight an important distinction, namely between alcohol and drug testing performed under a railroad's own authority and such testing as is performed under the authority provided by FRA's rule. Your letter blurs this distinction because incidents of *independently* authorized testing are nevertheless raised in support of your legal challenge to testing authorized by FRA's rule. I reiterate that any charges of harassment that arise or appear to have arisen under the claimed authority of FRA's testing rule will trigger a prompt and thorough investigation by this agency.

Let me note in conclusion that reasonable cause testing performed under the authority of Subpart D is apparently going quite smoothly. Moreover, we have received information that several such tests have yielded positive results (one of which turned up a blood alcohol concentration of .16 percent in a signalman). I sincerely believe that this testing serves the uniform desire in the industry: employees impaired by alcohol or drugs should not be permitted to participate in railroad operations.

Thank you for your interest in this matter.

Sincerely,

/s/ JOSEPH W. WALSH

Joseph W. Walsh
Associate Administrator
for Safety

U.S. Department of Transportation

News:

Office of the Assistant Secretary for Public Affairs
Washington, D.C. 20590

FOR RELEASE FRIDAY
October 10, 1986

DOT 94-86
Contact: Hal Paris
Tel. No. (202) 366-9550
Contact: Jennifer Hillings
Tel. No. (202) 366-4570

DOLE HAILS LA POLICE PROCEDURE TO DETECT DRUGGED DRIVERS

Secretary of Transportation Elizabeth Hanford Dole today hailed a potential breakthrough in the detection and prosecution of drug-impaired drivers.

In a drug detection program developed by the Los Angeles Police Department (L.A.P.D.) within the last year, officers who have been specially trained in drug recognition examined and rated suspects brought to the police station. The program has been credited with the successful prosecution of California drivers charged with driving under the influence of drugs.

"The Los Angeles Police Department's program is an important first step in overcoming the obstacles that have hindered the ability of the police to detect, arrest and obtain convictions for drugged drivers," Dole said.

Dole added that trained police officers are able to identify many drivers who have taken moderate to large doses of drugs, as well as identify the drug involved with an extremely high degree of accuracy.

DOT's National Highway Traffic Safety Administration (NHTSA) and the National Institute on Drug Abuse (NIDA) jointly sponsored a laboratory evaluation of the

L.A.P.D.'s drug detection procedures. During the study, conducted at Johns Hopkins University, specific drugs or placebos were administered in varying dosages to volunteers who were then rated independently by each of four L.A.P.D. drug recognition experts.

The results showed that the L.A.P.D. officers were over 98 percent accurate when they identified a subject as having taken a drug. In 92 percent of these cases, the officers correctly identified the class of drug administered.

A followup field evaluation confirmed the laboratory findings and showed the effectiveness of L.A.P.D. procedures in accurately recognizing drug use by drivers.

Police across the country widely use breath-testing devices to confirm that a driver is under the influence of alcohol, but no such device currently exists for detecting the use of other drugs.

In the L.A.P.D. drug detection procedure, a number of components are involved, including an interview concerning the suspect's medical and drug use history; and evaluation of the suspect's alertness and responsiveness; a measurement of certain physiological symptoms, including pulse rate, blood pressure, oral temperature, pupil size and skin signs of substance abuse; and a battery of behavioral tests similar to those used by police to test for alcohol impairment.

Summary reports of both laboratory and field evaluations are available in the form of research notes. Requests for the research notes should be addressed to the Office of Driver and Pedestrian Research, NRD-42, NHTSA, Washington, D.C. 20590. A self-addressed mailing label should accompany the request.

* * *

U.S. Department
of Transportation
National Highway
Traffic Safety
Administration

Research Notes

Laboratory Evaluation of the Los Angeles Police Department's Drugged Driver Detection Procedures

Theodore E. Anderson

The Los Angeles Police Department (LAPD) has developed a rating procedure for use in detecting drug-impaired drivers. Suspect drivers are rated at the stationhouse by officers who have (1) experienced extensive training in the application of this procedure, and (2) been formally qualified as a Drug Recognition Expert (DRE). The purpose of the rating procedure is to determine whether the driver is impaired and to identify the responsible drug class (e.g., stimulant, depressant, etc.). This information then becomes a major part of the prosecuting attorney's case against the driver for violation of the Driving Under the Influence of Drugs statute. It is therefore imperative that the validity of the rating procedure not be subject to question.

As part of a research effort designed to provide data regarding the validity of the LAPD Drugged Driver Detection program, a laboratory evaluation, sponsored jointly by NHTSA and the National Institute on Drug Abuse (NIDA), was recently completed by the Johns Hopkins University. The experimental procedure involved the administration of a specific drug dose conditions to volunteer subjects who were then rated independently by

each of four LAPD Drug Recognition Experts. The drugs administered were:

- Marihuana (2 dose levels)
- Depressants
  - Valium (2 dose levels)
  - Secobarbital (1 dose level)
- Stimulants
  - d-Amphetamine (2 dose levels)

The LAPD raters were instructed to indicate estimated drug classes even if they were not as confident as they would normally be in a field situation. For purposes of this experimental evaluation it was necessary to use a rating procedure slightly different from that used by the LA police under actual operating conditions. The time available for each rating/evaluation was limited to 20 minutes; this is in contrast to approximately one hour which is normally required. The procedure was modified by substituting check lists for note taking and review, and did not include a search for physical evidence (e.g., bags of marihuana) or application of a breath alcohol test.

The modified rating procedure consisted of three components. First was a brief interview concerning the subject's medical and drug use history, and recent eating, sleep and alcohol use. This interview component provided a basis for evaluating alertness and responsiveness, speech and conversation characteristics, and mood and attitude. Second was examination of the objective physiological signs, including pulse rate, blood pressure, oral temperature, pupil size, pupil response to light and dark, eye gaze nystagmus, smoothness of visual pursuit, perspiration, and salivation. Third was a field sobriety test assessing psychomotor performance and ability to remember and follow instructions; this consisted of four

elements: standing steadiness and time perception, ability to balance on one foot, ability to walk a straight line, and ability to touch your nose with eyes closed.

As regards results, the LAPD raters were quite accurate in correctly classifying individuals that had not received a drug. Approximately 95% of these test subjects were classified as "not intoxicated." For individuals who did receive a drug, the extent to which the LAPD rates specified "intoxication" appeared to vary depending on the drug and dosage level. In general, the percentage of "intoxication" ratings increased as the dosage level increased. The table below summarizes these results:

Drug Condition	**"Intoxication" Judgements (%)**
Secobarbital	95%
Valium – High Dose	85.0%
Valium – Low Dose	52.5%
Marihuana – High Dose	72.5%
Marihuana – Low Dose	32.5%
d-Amphetamine – High Dose	27.5%
d-Amphetamine – Low Dose	17.5%
No Drug	5.0%

One other major aspect of this study was to determine the LAPD raters ability to correctly specify the drug class responsible for the "intoxication." The results indicate that the raters were quite accurate in this regard. For example, 97.5% of the subjects classified by the raters as intoxicated by marihuana had, in fact, received one of the marihuana drug treatments. The corresponding percentages for the stimulant and depressant drug classes are 80% and 92.7%.

In summary, (a) for certain drug-dose combinations most subjects were rated as intoxicated, but for other combinations most were not, (b) subjects rated as intoxicated had almost always received a drug and raters were quite accurate in specifying which drug had been given to the subjects they rated as intoxicated, and (c) subjects who did not receive a drug were almost always rated as not intoxicated.

A report documenting the overall results of this laboratory evaluation in detail is currently in preparation and will be published as a joint NHTSA/NIDA sponsored document. Subsequent reports will examine the specific components of the LA rating procedure and suggest improvements. It should be stressed that this was a partial evaluation of the LAPD Drugged Driver Detection Procedure carried out under controlled laboratory conditions with only four test drugs. A field evaluation of the drug detection program is planned for 1985 in order to provide important information on the utility of the procedure when applied by a wider range of officers looking for a larger number of drugs than the laboratory test would allow. This evaluation will be carried out under actual operating conditions in Los Angeles in cooperation with the Los Angeles Police Department.

May 1985

U.S. Department of Transportation

National Highway Traffic Safety Administration

FIELD EVALUATION OF THE LOS ANGELES POLICE DEPARTMENT DRUG DETECTION PROCEDURE

Richard P. Compton

The Los Angeles Police Department (LAPD) has developed a drug recognition procedure designed to enable police officers to identify and differentiate between types of drug impairment. The subject-examination procedure focuses on detecting the use of drugs which are believed to impair driving performance, with special attention given to abused substances, such as cocaine, marijuana and phencyclidine (PCP). The LAPD program involves training officers to detect the patterns of behavioral and physiological symptoms associated with major drug categories (e.g., stimulants, depressants, hallucinogens). The Los Angeles Municipal Courts accept the expertise and court testimony of officers certified through the LAPD training program. The certified officers are known as Drug Recognition Experts (DREs).

The drug evaluation procedure developed by the LAPD consists of three components. First is an "interview" concerning the suspect's medical and drug use history, recent eating, sleep and alcohol/drug use. During the interrogation the officer evaluates the suspect's alertness and responsiveness, speech characteristics, mood and attitude. The second component involves measuring objective physi-

ological symptoms including pulse rate, blood pressure, oral temperature, pupil size, pupillary reaction to light and dark, nystagmus, smoothness of visual pursuit, perspiration, condition of the tongue, salivation, and skin signs of substance abuse. Third, are a battery of behavioral tests designed to assess psychomotor performance, the ability to follow and remember instructions, and divided attention. Some of the behavioral tests are similar to those being used by police to test for alcohol impairment (e.g., the one-leg-stand and walk-and-turn tests).

The National Highway Traffic Safety Administration, in cooperation with the Los Angeles Police Department, has conducted a two-part evaluation of the drug recognition procedure. First, a small scale laboratory study of the LAPD procedure was conducted in which four LAPD drug recognition experts independently rated dosed subjects in a double blind test procedure (a technical report by Bigelow, 1985 on the laboratory study is available). The results showed that when subjects were rated as intoxicated by the DREs they had almost always received a drug, that the DREs ability to detect when subjects had received a drug varied by drug-dose combination, and that the DREs were quite accurate in correctly classifying individuals that had not received a drug (see Anderson, 1985). The results of the laboratory study were promising though limited because only four test drugs were used and the officers were evaluating the subjects under laboratory conditions.

The second step was to conduct a field study to obtain data from a wider range of police officers looking for a larger number of drugs in adult suspects under actual field conditions. This research note presents the results of the field study.

Study Design

The field study ran for three months during the summer of 1985. The study sample was composed of adult suspects arrested for DUI within the city of Los Angeles who were suspected by the arresting officers of being under the influence of a drug other than alcohol, and who were not involved in a crash. Suspects arrested during the operational period were taken to any one of a group of selected senior DREs for a drug evaluation.

If the DRE concluded that the suspect was under the influence of drugs the suspect was asked to take a blood test. The blood samples were shipped to an independent laboratory for analysis and were screened for the presence of certain commonly impairing drugs.

Selected Major Results

A total of 201 suspects were evaluated during the study by a DRE using the drug recognition procedure and were judged impaired by drugs other than alcohol. Blood samples were obtained from 173 of these suspects (86%). The suspects were primarily young males (average age was 27 years old, 90% were males). The suspects who did not provide a blood sample did not differ from the suspects who did in terms of age, sex, race, BAC level, day of week arrested, etc.

The analysis of the blood samples identified 13 different psychoactive substances. In order of declining frequency, the most often detected drugs were: phencyclidine (PCP), alcohol, marijuana (THC), morphine, cocaine, diazepam, and codeine. In only one suspect were no drugs or alcohol detected. Multiple drug use was very common with two or more drugs (including alcohol) detected in 72% of the

suspects. Over 40 different drug combinations were found.

In terms of the accuracy of the DREs judgments, the important findings were:

- *When the DREs claimed drugs other than alcohol were present they were almost always detected in the blood (94% of the time).* It was rare for the DREs to claim a suspect had used drugs and for no drugs to be found in the suspect's blood.
- *The DREs were able to correctly identify at least one drug other than alcohol in 87% of the suspects evaluated in this study.*
- *When the DREs identified a suspect as impaired by a specific drug, the drug was detected in the suspect's blood 79% of the time.*
- *The DREs were entirely correct in identifying all of the drugs detected in the blood of almost 50% of the suspects.* Most of these suspects had used multiple drugs (other than alcohol).
- *The use of alcohol in conjunction with other drugs was pronounced with 50% of the suspects who had used drugs having also used alcohol.* The presence of alcohol (a central nervous system depressant) made the DREs detection of other drugs more difficult.
- *Only 6 of the suspects (3.7%) who had used drugs had BACs equal to or greater than 0.10% w/v. It is likely that most (if not all) of the remainder of the suspects would have been released if the drug symptoms had not been recognized by the DREs.*

Conclusion

The results of the two studies conducted by NHTSA show that the LAPD drug recognition procedure enables the experienced police officer to accurately recognize the symptoms of many types of drug use by drivers. When the officers identify a suspect as having used particular drugs, a blood test almost always will confirm their judgment. Blood tests are not currently conducted on a routine basis because the cost of testing for many possible drugs is prohibitively expensive. Because this procedure allows the police to focus on a few specific drugs, the cost of the blood test should be much less expensive and could therefore be more routine. Information regarding the particular drugs used by DUI drivers should increase successful prosecutions. Thus, this procedure appears to be a useful tool that will greatly enhance the enforcement of "driving under the influence of drugs" laws.

References

Anderson, T.E. *Laboratory Evaluation of the Los Angeles Police Department's Drugged Driver Detection Procedures*, May 1985, National Highway Traffic Safety Administration, Research Notes, U.S. Department of Transportation, Washington, DC.

Bigelow, G.E., Bickel, W.E., Roache, J.D., Liebson, I.A., and Nowowieski, P. *Identifying Types of Drug Intoxication: Laboratory Evaluation of a Subject-Examination Procedure*, May 1985, National Highway Traffic Safety Administration, Report No. DOT-HS-806-753, U.S. Department of Transportation, Washington, D.C.

NOTE: A Technical Report entitled "*Field Evaluation Of The Los Angeles Police Department Drug Detection Procedure,*" Report No. DOT HS-807-012, that provides a more complete and detailed description of the study and results is available by request from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

August 1986

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 85-2891

RAILWAY LABOR EXECUTIVES' ASSOCIATION, ET AL.,
PLAINTIFFS-APPELLANTS

v.

JAMES H. BURNLEY, SECRETARY, DEPARTMENT OF TRANSPORTATION, AND JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION,
DEFENDANTS-APPELLEES

AFFIDAVIT OF JOSEPH W. WALSH

I, Joseph W. Walsh, being first duly sworn, say:

1. I am employed by the Federal Railroad Administration (FRA) of the Department of Transportation as the Associate Administrator for Safety. In that capacity, I plan, develop, and administer FRA's rail safety program, including enforcement of all Federal laws and regulations concerning railroad safety and investigation of serious railroad accidents and incidents. I report to the Administrator and serve as his principal advisor on railroad safety.

2. Prior to assuming my present position in 1979, I was employed by the Brotherhood of Railroad Signalmen as Vice President-National Legislative Representative. I served in that position from 1973 to 1979. I began my railroad career in 1942 on the New Haven Railroad Company and held a number of railroad positions prior to commencement of my employment with the signalmen's union.

3. My staff is responsible for implementing and enforcing FRA's regulations on the Control of Alcohol and Drug Use, 49 C.F.R. Part 219, compiling statistics on the results of post-accident testing required by those regulations, and investigating serious railroad accidents. In addition, I serve *ex officio* as the head of FRA's Railroad Safety Board, which issues findings of probable cause on certain railroad accidents and an annual summary of the circumstances surrounding employee fatalities. Therefore, I am quite familiar with how our regulations have been implemented, the data produced by our post-accident testing program, and the usefulness of toxicological testing information in accident investigations.

4. In brief summary, FRA's alcohol and drug regulations have a twofold purpose: (1) to deter alcohol and drug use by railroad employees in safety-sensitive positions, thereby preventing death, injuries, and property damage that would otherwise be caused by such use, and (2) to provide data necessary for a complete understanding of the possible causal factors of serious railroad accidents, which permits FRA to target enforcement, regulatory, and other responses.

5. The limited data available prior to the effective date of FRA's regulations (February 10, 1986) indicated that, from 1975 through 1984, alcohol or drug use had caused or contributed to the severity of 48 accidents or incidents resulting in 37 fatalities, 80 nonfatal injuries, and $20.4 million in property damage. For a seven-year period prior to issuance of the regulations, sixteen percent (22 of 136) of the autopsies performed on employees killed in railroad accidents or incidents showed positive results for significant levels of alcohol or other drugs. This information, however, was most likely only part of the whole picture, as toxicological testing of employees who survived railroad

accidents, or who were directly involved in serious performance failures that did not cause accidents, was nearly nonexistent before the effective date of FRA's regulations. Further, drug toxicology as practiced in medical examiner's offices during the period usually did not include screens for drugs of abuse such as marijuana and cocaine.

6. From February 10, 1986, through December 31, 1987, 349 events occurred that qualified for post-accident testing under FRA's regulations. Attachment A is a chart showing the basic data obtained during that period. Of the employees tested as a result of their involvement in qualifying events, a total of 88 (or 5.8 percent) tested positive for either alcohol or drugs. This breaks down to 10 positives for alcohol (0.7 percent), 66 positives for controlled substances not medically authorized (4.4 percent), and 12 positives for medically authorized controlled substances (0.8 percent). The overall percentage rate for all positives (5.8 percent) is far lower than the 16 percent positive rate found in a seven-year period prior to the regulations' issuance for employees killed in railroad accidents and incidents, despite the fact that testing performed prior to the effective date of the rule was much less complete and less sensitive for drugs other than alcohol. Although neither these statistics nor others available are strictly comparable, we believe from the available data and daily contacts with the railroad industry that the rule has had a significant deterrent effect.

7. As shown by attachment A, the incidence of positive test results for employees tested under FRA's post-accident testing program actually declined in 1987 with respect to alcohol and medically authorized controlled substances. However, with regard to illicit drugs and legal drugs that were not medically authorized, the incidence among tested employees increased from 3.7 percent in

1986 to 5.1 percent in 1987. Although for technical reasons this may indicate more effective detection rather than an increasing rate of use, it does indicate a continuing need to address drug use in the railroad operating environment. Attachment B is a listing of each accident or incident in 1987 for which post-accident testing was performed.* As it reveals, the vast majority of positives detected in 1987 were for marijuana or cocaine, illicit drugs used secretively and with the purpose of avoiding identification.

8. There is no doubt that use of alcohol and drugs continues to play a causal role in some of the most serious rail accidents. The most notable example is the January 4, 1987 collision between an Amtrak passenger train and three Conrail locomotives at Chase, Maryland. That accident caused sixteen deaths and 174 injuries. Post-accident test results showed that the engineer and brakeman of the Conrail locomotives—who failed to observe signal indications and ran through a switch into the path of the high-speed Amtrak train—had marijuana metabolites in their blood and urine after the accident. (The brakeman also tested positive for PCP in the urine.) The National Transportation Safety Board concluded on January 20, 1988, that the leading contributing cause of this accident was the Conrail engineer's impairment by marijuana. On February 16, 1988, that engineer entered a guilty plea in a state prosecution to one count of manslaughter for his role in the accident, and signed a plea agreement and statement admitting that he and the brakeman had smoked marijuana in the locomotive cab a few minutes before the accident. I am aware of no method other than toxicological testing that would have revealed this on-the-job drug use. In the absence of FRA's regulations requiring that testing, there is no reason to believe that it would have been performed on the employees involved in the Chase accident, since none of the officials who spoke with the engineer and brakeman on the scene of the accident reported any suspicion of impairment.

* Results from four accidents involving positives for four employees have been excluded because the employees' use of the substances found had been medically authorized. Due to privacy concerns involved in such findings, FRA discloses them only to the extent necessary to complete a related accident investigation.

9. Although FRA is not able to conduct a full field investigation of all accidents for which mandatory alcohol/drug tests are performed, we do investigate a majority of those events. In a number of the investigations for which positive test results were obtained, we have indications that alcohol or drug use may have contributed to the cause of the accident. Attachment C is a listing of accidents or incidents in 1987 in which the presence of alcohol or drugs in employees has been identified by FRA as possibly contributing to the cause or severity of the event. Those accidents (including Chase, Maryland) and incidents resulted in 19 deaths, 226 injuries, the evacuation of more than 22,000 people, and over $17 million in property damage.

10. I am extremely concerned about the possibility that the testing provisions of FRA's alcohol and drug regulations (except for reasonable suspicion and pre-employment drug screening) may be taken out of effect by court order. Alcohol and drug use has been found in a significant portion of railroad accidents and incidents where post-accident testing has been performed. While FRA's regulations have not eliminated alcohol or drug abuse from the railroad operating environment, I believe they have had a very substantial deterrent effect. This effect has been provided not only by mandatory post-accident testing (Subpart C of FRA's rule), but also by Subpart D authorized testing (which, in addition to au-

thorizing testing based on reasonable suspicion of impairment, includes authority to test employees (i) reasonably suspected of contributing to the cause or severity of an accident or incident that does not qualify for mandatory testing, or (ii) directly involved in a serious violation of safety rules). After beginning slowly due to the need to conduct training; make logistical arrangements, and gain experience, all major railroads are presently engaged in more active use of authorized testing or incident-driven testing under their own policies. It is critical that this activity continue in order to identify chronic substance abusers and to deter occasional users before they are the cause of death, serious injury, or the release of hazardous materials.

11. I also believe that, if the program is confined to reasonable suspicion testing, its effect will be vastly diminished. At best, only employees who believe their alcohol or drug use is likely to produce readily observable symptoms while in the presence of their supervisors would continue to be deterred. Through a long process of rulemaking and two years of program administration, FRA has learned that the great preponderance of drug use, and a significant amount of alcohol use, is not detectable through normal supervisory observations. I fear that this critical limitation on the detection system will result in deaths and injuries that could be avoided if the rule remains in effect.

12. I am also greatly concerned about the loss of data vital to accident investigations that would no doubt occur during the suspension of most of the regulations' testing provisions. The probable contributing factors are not often readily apparent in the immediate aftermath of a major railroad accident. The locomotives and rail cars involved, the track and signal systems in the vicinity, data from event recorders, the observations of witnesses and

employees involved, and all relevant documents must ordinarily be reviewed before conclusions can be reached. In many cases, testing of equipment or signal systems is essential. Careful analysis of each potentially causal factor is necessary. If we are required to revert to a system in which one essential piece of data – the presence of alcohol or drugs in the systems of employees involved in the accident or incident – is unavailable, our ability to correctly determine the cause will be diminished in a significant number of serious accidents. The public and employees protected by our regulations and enforcement actions will lose the benefit of the actions we would have taken based on correct determinations of cause in those accidents actually caused by alcohol or drug use but never revealed as such because of the lack of testing. Experience has shown that overt, readily discernible symptoms of alcohol or drug use are rarely, if ever, present in the aftermath of an accident. In the accidents FRA has investigated to date in which post-accident testing has revealed alcohol or drug use, only one of the employees involved (a case of gross alcohol intoxication) displayed observable symptoms before or after the accident that would have made testing possible under a standard requiring the presence of observable symptoms of alcohol or drug impairment. Had such a standard been in effect, all of the other data we have acquired would apparently have been lost.

13. Based on my 45 years of experience in the railroad industry as an employee, union official, and federal safety official, I am convinced that railroad employees, passengers, and segments of the general public potentially affected by railroad accidents are much safer with all of

the testing provisions of FRA's alcohol and drug regulations in effect than they would be without them.

/s/ JOSEPH W. WALSH

Subscribed and sworn to before me
this 22nd day of February 1988

Notary Public, HAROLD E. FINNEY
My commission expires: Feb. 14, 1990

ATTACHMENT A

U.S. Department
of Transportation

Federal Railroad Administration

400 Seventh St., S.W.
Washington, D.C. 20590

February 1988

SUMMARY OF POST-ACCIDENT TESTING EVENTS
(49 CFR Part 219, Subpart C)

	Calendar 1986 (2/10/86 thru 12/31/86)	Calendar 1987 (12 mos.)	Cumulative Totals (2/10/86 thru 12/31/87)
Qualifying Events	170	179	349
Total Employees Sampled	738 (100%)	770 (100%)	1508 (100%)
Number of Sample Sets w/ Positive (Urine, Blood, or Both):			
Alcohol	7 (0.9%)	3 (0.4%)	10 (0.7%)
Controlled Substances – illicit or not medically authorized	27 (3.7%)	39 (5.1%)	66 (4.4%)
Total Alcohol/Illicit Drugs	34 (4.6%)	42 (5.5%)	76 (5.0%)
Controlled Substances – medically authorized	8 (1.1%)	4 (0.5%)	12 (0.8%)
Total Alcohol & Drugs	42 (5.7%)	46 (6.0%)	88 (5.8%)

(See Notes attached.)

NOTES:

1. Figures are stated on calendar year basis in order to establish a format for regular reporting. Previous summaries were based on partial years or other non-calendar year basis.
2. Post-accident testing was authorized as of February 10, 1986, and was mandatory as of March 10, 1986.
3. One alcohol positive for 1986 was deleted from the data base, since the railroad investigation determined that the employee consumed alcoholic beverages after having been released from work, but prior to being recalled for testing.
4. The data for medically authorized controlled substances have been adjusted by deleting 1986 positives for propoxyphene, a popular prescription analgesic (sold as Darvon, etc.). During early 1987, the decision was made to delete propoxyphene from the list of substances tested. Five (5) employees were reported positive for propoxyphene in 1986.
5. The following additional factors may affect comparability of 1986 and 1987 data:
   a. Most 1986 drug urine screening was performed by enzyme multipled immunoassay, while most 1987 screening was by radio immunoassay. Analytical techniques had slightly lower detection limits for certain analysis conducted in 1987.
   b. Supervision of collection to avoid dilution or adulteration of urine specimens may have been more successful in the 1987 period due to accumulated experience of railroads and medical facilities.
   c. Available assays do not presently permit detection of new low-dosage benzodiazepines that may be used in lieu of other tranquilizers such as diazepam (Valium).

6. Figures add. Where both a licit drug and illicit drug were detected, the entry has been credited to the illicit category. No sample sets were positive for both a controlled substance (C.S.) and alcohol. Some sample sets were positive for more than one licit C.S. or more than one illicit C.S., so the total number of positive findings is higher than displayed. All percentages may not add due to rounding.
7. Data for alcohol may understate incidence of accident involvement, since screening is performed on blood, and low levels of alcohol may in some cases be eliminated from the blood during the interval between the accident and sample collection.
8. Data are not conclusive of alcohol/drug role in individual accidents, except as may be developed through an accident investigation.

ATTACHMENT B

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Post Accident Testing Events With Positive Test Results*
January 1, 1987 through December 31, 1987

Railroad	Date	Location	Type Accident	Position of Employee	Substance Found and Level (per ml)	Time of Accident	Approximate Time of Sample Collection
Amtrak/CR	01-04-87	Chase, MD	Fatality	Engineer	THC-COOH 212 ng (U); THC-COOH 52 ng (P)	1:30 p	6:30 p
				Brakeman	THC-COOH 109 ng (U); THC-COOH 15 ng (P) PCP 6 ng (U)	1:30 p	10:00 p
CSX	01-13-87	Ravenna, OH	Impact/Dam.	Engineer	Alcohol .008 (B), .025 (U)	10:20 a	1:35 p
B&M	01-25-87	Fitchburg, MA	$500,000+	Engineer	BE 234 ng (B) 3770 ng (U)	8:10 a	11:25 a
Metro North	02-17-87	New York, NY	Impact/Inj.	Engineer	THC-COOH 18 ng (B) 289 ng (U)	7:10 p	12:20 a
SP	02-27-87	Cleveland, TX	$500,000+	Conductor	THC 2 ng (B) THC-COOH 58 ng (B) 201 ng (U)	2:38 p	8:15 p
NS	03-03-87	Knoxville, TN	Impact/Inj.	Hostler	THC 1 ng (B) THC-COOH 24 ng (B) 196 ng (U)	5:10 p	7:00 p
UP	03-06-87	Green River, WY	Impact/Dam.	Conductor	THC-COOH 55 ng (U)	5:05 a	7:05 a
				Pilot	THC-COOH 41 ng (B) 134 ng (U)	5:05 a	7:15 a
UP	03-08-87	Meadow Creek, ID	$500,000	Brakeman	BE 254 ng (B) 502 ng (U)	2:15 a	10:00 a

*Excluding authorized use of therapeutic drugs

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BN	03-19-87	Alvord, TX	$500,000	Brakeman	THC 2.8 ng (B) THC-COOH 59 ng (B) 92 ng (U)	10:30 p	5:55 a
NS	03-28-87	Ft. Wayne, IN	Fatality (TI)	Brakeman	THC 2.5 ng (B) THC-COOH 33 ng (B) 217 ng (U)	10:30 a	6:25 p
Amtrak	04-10-87	New York, NY	Fatality (TI)	Conductor	BE 54 ng (B) 4130 ng (U)	8:47 p	3:00 a
				Brakeman	THC-COOH 4.1 ng (B) 66 ng (U)	8:47 p	Fatality
CR	04-11-87	Pittsburgh, PA	RR/Derac.	Engineer	Butalbital 3,400 ng (B) Butalbital 3,000 ng (U) Codeine 1,000 ng (U)	12:30 p	6:00 p
PATH	04-13-87	Hoboken, NJ	Impact/Inj.	Engineer	THC-COOH 26 ng (U) BE 500 ng (B) BE 4,820 ng (U)	1:59 p	3:25 p
UP	04-25-87	Texarkana, TX	Impact/Inj.	Brakeman	THC 1.3 ng (B) THC-COOH 26 ng (B) 85 ng (U)	9:25 p	2:20 a
PATH	04-27-87	New York, NY	Impact/Inj.	Engineer	THC 1.7 ng (B) THC-COOH 80 ng (B) 422 ng (U)	8:20 a	11:00 a
UP	04-29-87	Herkimer, KS	$500,000+	Brakeman	THC-COOH 20 ng (B) 453 ng (U)	4:50 p	7:00 p
ICG	05-02-87	Gillman, IL	Impact/Dam.	Brakeman	BE 430 ng (U)	11:53 a	4:30 p
ATSF	05-09-87	Sweetwater, TX	Impact/Inj.	Fireman	THC 2 ng (B) THC-COOH 120 ng (B) 126 ng (U)	8:05 a	3:35 p

CSX	05-12-87	Lexington, KY	HM/Emsc.	Brakeman	THC-COOH 75 ng (B) 2,020 (U)	8:50 p	2:00 a
C&NW	05-17-87	W. Fenard, WI	$500,000+	Brakeman	THC-COOH 39 ng (B) 96 ng (U)	6:20 p	11:40 p
UP	05-22-87	Oshkosh, WI	$500,000+	Brakeman	THC-COOH 11 ng (B) 27 ng (U)	9:05 p	3:30 a
SP	06-15-87	Yuma, AZ	Fatality	Engineer	Alcohol .16% (Vitreous)	1:15 a	Fatality
UP	06-26-87	Council Bluffs, Iowa	Impact/Inj.	Brakeman	THC-COOH 4 ng (B) 78 ng (U)	7:35 p	10:00 a
UP	07-17-87	Weatherby, OR	Impact/Inj.	Pilot/Conductor	THC-COOH 3 ng (B) 21 ng (U)	9:45 p	1:00 a
CM&W	08-10-87	E. St. Louis, IL	HM/Emsc.	Conductor	THC-COOH 13 ng (B) 55 ng (U)	8:15 a	2:10 p
KCS	08-15-87	DeQueen, AR	Impact/Dam.	Engineer	Alcohol .036% (B) .049% (U)	8:20 p	1:00 a
CSX	09-01-87	Cincinnati, OH	Fatality (TI)	Conductor	THC 1 ng (B) THC-COOH 124 ng (B) 84 ng (U)	4:15 p	8:16 p
BN	09-13-87	Lariat, WY	$500,000+	Brakeman	THC 4 ng (B) THC-COOH 168 ng (B) 72 ng (U)	4:20 p	10:00 p
				Brakeman	THC-COOH 8 ng (B) 25 ng (U)	4:20 p	9:50 p
UP	09-17-87	N. Platte, NE	$500,000+	Hostler	THC 1 ng (B) THC-COOH 45 ng (B) 178 ng (U)	9:30 p	12:47 a

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ATSF	10-01-87	Brenham, TX	$500,000+	Brakeman	THC-COOH 30 ng (B) 128 ng (U)	5:35 p	2:30 a
UP	11-08-87	Kemmerer, WY	Fatality	Brakeman	Cocaine 170 ng (U) BE 140 ng (B) BE 21,200 ng (U)	6:07 a	12:25 p
B.T.	11-09-87	Lawrence, MA	Fatality (TI)	Brakeman	THC-COOH 20 ng (B) 45 ng (U)	4:15 p	9:20 p
CR	11-18-87	Johnstown, PA	Fatality (TI)	Engineer	BE 199 ng (U)	8:49 p	2:10 a
NS	12-02-87	Charleston, TN	HM/Emsc.	Conductor	Methaqualone 970 ng (B)	9:57 p	2:45 a
				Brakeman	THC 2 ng (B) THC-COOH 110 ng (B) 2,240 ng (U)	9:57 p	2:45 a
UP	12-06-87	Urania, LA	$500,000+	Fireman	THC-COOH 16 ng (B) 84 ng (U)	3:30 a	10:00 a
NS	12-21-87	Opelika, AL	$500,000+	Engineer	THC 3 ng (B) THC-COOH 146 ng (B) 240 ng (U)	10:00 p	6:20 a
LI	12-29-87	New York, NY	Fatality (TI)	Engineer	THC-COOH 4 ng (B) 28 ng (U)	7:18 a	11:14 a

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(U) Urine Level
(B) Whole Blood Level
(P) Plasma Level
THC-COOH - Delta - 9 Tetrahydrocannabinol - 9 - Carboxylic Acid ("Carboxy THC"), Metabolite of Marijuana
BE - Benzoylecgonine, Principal Metabolite of Cocaine
PCP - Phencyclidine
T.I. - Train Incident

CALENDAR 1987 RAILROAD ACCIDENT/INCIDENTS INVOLVING PRESENCE OF ALCOHOL/DRUGS IN EMPLOYEES

IDENTIFIED AS POSSIBLY CONTRIBUTING TO THE CAUSE OR SEVERITY OF THE ACCIDENT/INCIDENT

Accident/Incident	Consequences	Role of Alcohol/Drugs
Chase, Md., Conrail/Amtrak Jan. 4, 1987	Fatalities: 16 Injuries: 174 Damage: $13,456,000	Engineer and brakeman of 3 locomotives failed to observe signal indications and ran through switch into path of passenger train, which struck locomotives from rear. Engineer tested positive for marijuana metabolite in the blood (53 ng) and urine (313 ng); specimens collected over 4 hours after accident. Brakeman tested positive for marijuana metabolites in blood (15 ng) and urine (109 ng) and for PCP in the urine (64 ng); specimens collected over 8 hours after accident. NTSB concluded that the probable cause of the accident was "the failure, as a result of impairment from marijuana, of the engineer of the Conrail train ENS-131 to stop his train in compliance with [the] home signal ...." On Feb. 16, 1988, engineer entered guilty plea to one count of vehicular manslaughter, having stipulated to statement of facts describing on-duty use of marijuana by him and the brakeman.
*Ravenna, Ohio, CSX, Jan. 13, 1987	Damage: $81,000	Freight train operated in violation of train order struck ballast regulator on track. Engineer tested positive for alcohol in the blood (.008%) and urine (.029%); samples collected 3 hours after accident.
**Knoxville, Tenn., NS, March 3, 1987	Injuries: 1 Damage: $5,200	Hostler and hostler helper failed to make brake test before moving locomotives from yard to service area; locomotives collided with standing cars; helper tested positive for THC in blood (1 ng) and marijuana metabolite in blood (24 ng) and urine (198 ng); samples collected 1'50" after accident.

Accident/Incident	Consequences	Role of Alcohol/Drugs
**Green River, Wyo., UP, March 8, 1987	Damage: $46,000	Yard movements collided after conductor in charge of one and pilot (brakeman) of the other discussed the planned movements. Conductor tested positive for the marijuana metabolite in the urine (55 ng), and the pilot tested positive for the marijuana metabolite in the blood (41 ng) and urine (134 ng). Samples collected within approximately 2 hours.
Pittsburg, Pa., Conrail, April 11, 1987	Damage: $663,328 Hazardous Material: 22,000 evacuated; Injuries: 25 treated and released	Freight train operated overspeed on curve sideswiped train on adjoining track, resulting in a derailment, release of hazardous material, fire involving non-regulated commodities, and evacuation of 22,000 residents. Circumstances indicated inattention by engineer of overspeed train, who had self-medicated with preparation containing butalbital, a medium to long-acting barbiturate (central nervous system depressant). Last dose of drug was said to have been taken 26 hours prior to accident. The therapeutic level of drug remaining in his system may have adversely affected his alertness.
*New York, N.Y., Amtrak, April 18, 1987	Fatalities: 1	Assistant conductor fatally injured when crushed between locomotive and baggage car during switching movement. Samples from the assistant conductor, who was pronounced dead at the scene within approximately 20 minutes after the accident, tested positive for the marijuana metabolite in the blood (4 ng) and urine (66 ng). Samples received from the conductor, who may have been giving instructions for the movement, tested positive for the cocaine metabolite in the blood (54 ng) and urine (4.13 mcg); conductor's samples collected over 6 hours after accident.

Accident/Incident	Consequences	Role of Alcohol/Drugs
*Hoboken, N.J., PATH, April 13, 1987	Injuries: 1 Damage: $13,100	Motorman cut out electro-pneumatic brakes and failed to stop short of bumping block; cocaine metabolite detected in blood (.50 mcg) and urine (4.81 mcg) and marijuana metabolite in urine (26 ng); samples collected within 1'30''.
*New York, N.Y., PATH, April 27, 1987	Injuries: 17 Damage: $7,300	Rear-end collision; motorman of striking train passed restrictive signal; samples collected 2'40" after accident tested positive for THC (1.7 ng) and marijuana metabolite in blood (88 ng) and in urine (423 ng).
**Lexington, Ky., CSX, May 13, 1987	Hazardous Material: 4 evacuated Damage: $5,000	Brakeman placed derail in derailing position under movement, causing tank car to turn over and release hazardous materials; brakeman tested positive for marijuana metabolite in the blood (75 ng) and urine (2.02 mcg). Samples collected over 4 hours after accident.
*Yuma, Arizona, SP, June 15, 1987	Fatalities: 1 Damage: $1,857,150	Engineer of striking train failed to stop short under yard limit rule and was killed in collision; post mortem specimens indicate presence of ingested alcohol, with attained BAC prior to going duty in excess of .10% and with estimated BAC at death in the range of .04 to .14%. BAC at time of accident could not be determined with precision due to exsanguination of body.
**DeQueen, Ark., KCS, Aug. 15, 1987	Damage: $145,600	Side collision; engineer of striking train, who failed to operate train in accordance with operating rules, tested positive for alcohol in blood (.038%) and urine (.049%); samples collected 4'45" after accident.

Accident/Incident	Consequences	Role of Alcohol/Drugs
*North Platte, Neb., UP, Sept. 19, 1987	Damage: $271,000	Hostler left locomotive units unattended and without brakes, causing them to run uncontrolled into standing train. Hostler tested positive for THC (1 ng) and the marijuana metabolite (45 ng) in the blood and for the metabolite in the urine (178 ng); samples collected over 3 hrs. after accident.
*Kemmerer, Wyoming, UP, Nov. 8, 1987	Fatalities: 1 Injuries: 8 Damage: $800,000	Head-on collision between two freight trains. Front brakeman on eastbound train, which was not operated in accordance with signal indications, tested positive for cocaine in the urine (178 ng) and the cocaine metabolite in the blood (140 ng) and urine (21.1 mcg). Samples collected over 6 hours after accident.

SUMMARY DATA:

No. of listed accidents/ incidents	13
Fatalities	19
Injuries	226
Damage	$17,236,178

LEGEND: ng - nanogram (0.000000001 gram) (expressed per milliliter)
mcg - microgram (1,000 ng) (expressed per milliliter)
THC - active compound in marijuana
Damage - railroad property damage

*/ Still under investigation by FRA.
**/ No FRA field investigation; information developed from railroad reports and direct inquiries.

Note: Events for which alcohol/drug presence not deemed of significance in the investigation are not listed.

Supreme Court of the United States

No. 87-1555

JAMES H. BURNLEY IV,
SECRETARY OF TRANSPORTATION, ET AL.

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 6, 1988.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is set for oral argument in tandem with No. 86-1879, *National Treasury Employees Union v. Von Raab*.

A true copy JOSEPH F. SPANIOL, JR.

Test:

Clerk of the Supreme Court of the
United States

By _____
Deputy

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